

08:32AM 1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF HAWAII

## APPEARANCES:

For the Plaintiff: MARK INCIONG, ESQ.  
MICHAEL DAVID NAMMAR, ESQ  
WILLIAM KE AUPUNI AKINA, ESQ.  
AISLINN AFFINITO, ESQ.  
Office of the United States Attorney  
PJKK Federal Building  
300 Ala Moana Boulevard, Suite 6100  
Honolulu, Hawaii 96850

17 For the Defendant: LYNN E. PANAGAKOS, ESQ.  
18 841 Bishop St., Ste 2201  
Honolulu, HI 96813

19 MICHAEL JEROME KENNEDY, ESQ.  
20 Law Offices of Michael Jerome  
Kennedy, PLLC  
21 333 Flint Street  
Reno, NV 89501

22 Official Court Reporter: Gloria T. Bediamol, RPR RMR CRR FCRR  
United States District Court  
300 Ala Moana Boulevard  
Honolulu, Hawaii 96850

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08:42AM 1 exhibits late last night -- I mean, well, 8:20 last night, and  
08:43AM 2 that the government intends to use for the forfeiture hearing.  
08:43AM 3 And we just haven't had sufficient time to review and make use  
08:43AM 4 of them. I mean, I haven't even been able to print them out  
08:43AM 5 and select what I would use for cross-examination. You know, I  
08:43AM 6 just completely -- not enough time to prepare to use them.

08:43AM 7 So --

08:43AM 8 THE COURT: Are these 99 exhibits that have -- that  
08:43AM 9 are not in --

08:43AM 10 MS. PANAGAKOS: Correct.

08:43AM 11 THE COURT: -- the 10,000 binders I have behind me?

08:43AM 12 MS. PANAGAKOS: Correct.

08:43AM 13 THE COURT: These are brand new exhibits that you had  
08:43AM 14 not previously been notified as having been exhibits.

08:43AM 15 MS. PANAGAKOS: Correct. We got five summary charts  
08:43AM 16 on Saturday, which are included within the 99. So five on  
08:43AM 17 Saturday and the rest of the 99 last night, yeah.

08:43AM 18 THE COURT: All right. Who wants to address this for  
08:43AM 19 the government?

08:43AM 20 MR. INCIONG: Your Honor, we filed them as soon as we  
08:43AM 21 could. It was not a case of, you know, waiting until --  
08:43AM 22 obviously we didn't have a verdict until Thursday afternoon,  
08:44AM 23 and we were working on it over the weekend and deciding what we  
08:44AM 24 needed and what we didn't need, trying to be as efficient as  
08:44AM 25 possible.

08:44AM 1 I would point out during the defense case we never got  
08:44AM 2 an exhibit list before 10:00 p.m. on any day. In many cases it  
08:44AM 3 was 1:00 or 2:00 in the morning, and that was -- so, I mean,  
08:44AM 4 this is kind of the way it's been in this case.

08:44AM 5 MS. PANAGAKOS: Your Honor, may I respond to that?

08:44AM 6 THE COURT: Yes, of course.

08:44AM 7 MS. PANAGAKOS: Our exhibit lists that were filed the  
08:44AM 8 night before were impeachment exhibits to cross-examine  
08:44AM 9 witnesses, not --

08:44AM 10 MR. INCIONG: I'm talking about the defense case.

08:44AM 11 MS. PANAGAKOS: And we did have -- you know, the one  
08:44AM 12 time that's analogous is with the Ken Hines summaries, and the  
08:44AM 13 government was given extra time to go over them.

08:44AM 14 And that's all I'm asking. I mean, I wouldn't object  
08:44AM 15 to the direct testimony today, but if we could just -- I guess  
08:44AM 16 my proposal would be to have Mr. Hines, who is here, be able to  
08:44AM 17 sit in on today's hearing and have the direct testimony today,  
08:44AM 18 and let me cross the IRS people tomorrow.

08:45AM 19 THE COURT: How many of these 99 exhibits did the  
08:45AM 20 government intend to offer through the witnesses that are  
08:45AM 21 identified for today? All of them?

08:45AM 22 MR. INCIONG: I would estimate half, Your Honor.

08:45AM 23 MS. PANAGAKOS: Your Honor, I would just also point  
08:45AM 24 out that some of them weren't even in the discovery from -- you  
08:45AM 25 know, that's how new they are.

08:45AM 1 THE COURT: Okay. So the government -- so,  
08:45AM 2 Ms. Panagakos, as I understand her objection, isn't saying that  
08:45AM 3 these exhibits should be excluded. It's just that she needs  
08:45AM 4 more time to prepare. So given the disclosure at 8:18 last  
08:45AM 5 night, it doesn't seem unreasonable of a request to me.

08:45AM 6 So the government has a choice. You can wait until  
08:46AM 7 tomorrow's proceedings and utilize the witnesses that are --  
08:46AM 8 that you intend to introduce these -- one or more of these 99  
08:46AM 9 exhibits or you can present them on direct, as Ms. Panagakos  
08:46AM 10 has offered that they don't have an objection to that. But if  
08:46AM 11 their direct is done today, the cross-examination would be  
08:46AM 12 reserved until tomorrow to give her another day or another  
08:46AM 13 evening to review these documents. It doesn't matter to me  
08:46AM 14 what -- what the government chooses to do.

08:46AM 15 Okay. So that's the first issue.

08:46AM 16 The second one is relating to the use of hearsay.  
08:46AM 17 Does anyone -- I've read the two briefs on this subject. Does  
08:46AM 18 anyone wish to be heard further? Otherwise, I'm prepared to  
08:46AM 19 rule.

08:46AM 20 MR. AKINA: Yes, Your Honor.

08:46AM 21 THE COURT: Mr. Akina.

08:47AM 22 MR. AKINA: A couple of responses to the defense's  
08:47AM 23 objection. This is clearly -- we're clearly now past the  
08:47AM 24 conviction stage, past the guilt stage. This is the forfeiture  
08:47AM 25 stage. It's under sentencing. So that's how it's structured

08:47AM 1 under the rules. That's what every case I've seen has  
08:47AM 2 indicated, Supreme Court down to this district.  
08:47AM 3 There is -- just because the trier of fact has  
08:47AM 4 changed, judge versus jury, that doesn't change the burden of  
08:47AM 5 proof. It doesn't change standard of proof either. This is  
08:47AM 6 part of sentencing. That's why we have preponderance of the  
08:47AM 7 evidence standard. That's what the committee notes, the 32.2  
08:47AM 8 notes. That's the same reason why admissible -- hearsay is  
08:47AM 9 admissible in this type of proceeding. There's a different set  
08:47AM 10 of rules now. The rules are now it must be relevant and  
08:47AM 11 reliable.

08:47AM 12 The distinction the defense tries to draw, I don't  
08:48AM 13 really see it. The distinction between a judge making the  
08:48AM 14 decision versus a jury making the decision, that's going to be  
08:48AM 15 the same decision that they have to come to the conclusion of.  
08:48AM 16 What's the nexus? Rule 32.2 lays out -- besides that, lays out  
08:48AM 17 the same procedure.

08:48AM 18 So for those reasons -- I would also note we didn't  
08:48AM 19 identify anything specific. We did indicate -- included some  
08:48AM 20 case law about coconspirator statements at the time we were  
08:48AM 21 considering maybe doing that. We don't plan on introducing  
08:48AM 22 coconspirator statements at this phase of the trial as well,  
08:48AM 23 but nonetheless, I don't think that changes the standard.

08:48AM 24 THE COURT: Okay. Ms. Panagakos or Mr. Kennedy.

08:48AM 25 MS. PANAGAKOS: Yes, Your Honor. You know, Mr. Akina

08:48AM 1 says he doesn't see a difference between judge and jury.

08:48AM 2 There's obviously a big one. Rule 32.2 does not talk about

08:48AM 3 admissibility of hearsay when it's before the jury. You know,

08:49AM 4 there will be a different time, at sentencing or maybe before

08:49AM 5 sentencing, when the court issues a preliminary order of

08:49AM 6 forfeiture. That's not this proceeding. That's what 32.2, the

08:49AM 7 first section on what the court can consider.

08:49AM 8 I mean it's very clear. The language of the rule says

08:49AM 9 what the court can consider. And that's at a different stage,

08:49AM 10 which is sentencing. This is Phase 2 of a jury trial. They

08:49AM 11 didn't cite a single case where hearsay was admissible to a

08:49AM 12 jury of where the sentencing standard as to what evidence can

08:49AM 13 be considered is what applies to a jury, they didn't set a

08:49AM 14 single case which says that.

08:49AM 15 You know, I would note that there is the circuit split

08:49AM 16 on the standard of proof. You know, that may be resolved by

08:49AM 17 the Supreme Court some day. You know, we have our objection

08:49AM 18 preserved on that. But, you know, that also goes to why it

08:49AM 19 should be the Rules of Evidence should apply.

08:49AM 20 And now they're saying they didn't -- I'm sorry, Your

08:49AM 21 Honor.

08:49AM 22 THE COURT: No, go ahead.

08:49AM 23 MS. PANAGAKOS: Now they're saying they don't intend

08:50AM 24 to introduce coconspirator statements. Well, what hearsay do

08:50AM 25 they introduce? I mean, there at least has to be -- if Your

08:50AM 1 Honor is going to apply the sentencing due process standard,  
08:50AM 2 which we object to for the reasons we cited, you know, there at  
08:50AM 3 least has to be some showing of reliability and some extrinsic  
08:50AM 4 evidence we could cross on, and we don't even know what that  
08:50AM 5 is. So we'd at least need to know that in advance. Thank you,  
08:50AM 6 Your Honor.

08:50AM 7 THE COURT: All right. So in addressing this issue --  
08:50AM 8 and for the record, the relevant briefs are at Docket 1724 and  
08:50AM 9 1726 -- the government cites a number of cases. In my mind,  
08:50AM 10 the two principle ones are the Davila and Haleamau cases. Both  
08:50AM 11 of those cases involve the determination that hearsay is  
08:50AM 12 permitted in forfeiture proceedings before the court.

08:51AM 13 The defense quarrels with those two citations, but of  
08:51AM 14 course offers none of its own relating to the use of hearsay in  
08:51AM 15 any kind of proceedings. The defendant tries to distinguish  
08:51AM 16 the government -- all of the government's cases, including  
08:51AM 17 Haleamau and Davila, but does not offer any authority of its  
08:51AM 18 own, except for one. The one exception is Federal Rule of  
08:51AM 19 Evidence 1101. And there that citation is for the proposition  
08:51AM 20 that the Federal Rules of Evidence apply and do not apply in  
08:51AM 21 certain circumstances.

08:51AM 22 And the enumerated proceedings that 1101 says the  
08:51AM 23 Rules of Evidence do not apply, according to the defense, is  
08:51AM 24 forfeiture. It does not say -- does not provide an exception  
08:52AM 25 for the Rules of Evidence in forfeiture proceedings. And while

08:52AM 1 that is objectively true, 1101(d) (3) says that the rules do not  
08:52AM 2 apply in sentencing proceedings. Forfeiture is part of  
08:52AM 3 sentencing. The government has made that assertion, and  
08:52AM 4 there's been no argument or citation to the contrary by the  
08:52AM 5 defense. That is a material issue.

08:52AM 6 But like Mr. Akina, I do not see there being a  
08:52AM 7 material difference, a substantive difference in who the fact  
08:52AM 8 finder is. So where these courts have said that hearsay is  
08:52AM 9 permitted in forfeiture proceedings before the court, I see no  
08:52AM 10 difference -- no reason to rule otherwise when those same  
08:53AM 11 proceedings come before the jury.

08:53AM 12 Now, that doesn't mean that all hearsay is permitted,  
08:53AM 13 and I don't think either side, including the government, is  
08:53AM 14 suggesting otherwise. There must be some indicia of  
08:53AM 15 reliability, and the fact that it's hearsay is perhaps right  
08:53AM 16 away some indicia of unreliability. But so long as that  
08:53AM 17 standard is met, what the government refers to as both  
08:53AM 18 procedural or substantive reliability, I see no reason why that  
08:53AM 19 could not be as a matter of law allowed for consideration by  
08:53AM 20 the -- by the jury.

08:53AM 21 I can't provide more specifics because I've been given  
08:53AM 22 no more specifics in terms of what hearsay the government sees  
08:53AM 23 as coming down the pipe over the next couple of days. So we  
08:53AM 24 will have to reserve until that occurs.

08:53AM 25 The last issue that was briefed over the weekend

08:54AM 1 relates to the defense motion that is styled to preclude the  
08:54AM 2 government from arguing forfeiture theories which are  
08:54AM 3 inadequate as a matter of law. The relevant briefs are at 1725  
08:54AM 4 and I'm not sure what the government's opposition was docketed  
08:54AM 5 at, perhaps at 1727, but I'm not certain of that.

08:54AM 6 MR. KENNEDY: Your Honor, just so the record is clear,  
08:54AM 7 I believe it's at 1728.

08:54AM 8 THE COURT: All right. Thank you. My version that I  
08:54AM 9 have in front of me is an undocketed copy that I think we got  
08:54AM 10 via email.

08:54AM 11 All right. Who wishes to be heard on this? It seems  
08:54AM 12 like the defense ought to go first, it's their motion.

08:54AM 13 MS. PANAGAKOS: Thank you, Your Honor. You know,  
08:54AM 14 during jury instructions we objected to the RME fraud  
08:54AM 15 instruction, folded into the wire fraud instruction, which the  
08:54AM 16 Court sustained that objection. And now we're -- now it's --

08:55AM 17 THE COURT: I sustained the objection to including --  
08:55AM 18 including specific language regarding RME fraud in the jury  
08:55AM 19 instructions, but I did not sustain the objection with respect  
08:55AM 20 to whether the government can proceed with RME fraud as a  
08:55AM 21 theory. And in fact, I don't think the government did abstain  
08:55AM 22 or abdicate that theory in -- in what remained of the  
08:55AM 23 proceedings, including closings thereafter.

08:55AM 24 MS. PANAGAKOS: Right, Your Honor, and that, you know,  
08:55AM 25 we made a general Rule 29 motion as to Count 1, but there was

08:55AM 1 no substantive wire fraud count charging the RME fraud theory.  
08:55AM 2 So there was no, you know, procedural vehicle to move to  
08:55AM 3 dismiss a count pursuant to Rule 29.

08:55AM 4 So now that we're at the forfeiture phase, and in  
08:55AM 5 looking at Special Agent Turner's affidavit, and he's on the  
08:56AM 6 witness list, it looks like from my reading of the affidavit  
08:56AM 7 that legally inadequate theory was presented. The theory being  
08:56AM 8 that we're arguing is inadequate is that -- you know, that the  
08:56AM 9 license is not -- they did not obtain property by making a  
08:56AM 10 false statement to the DCCA.

08:56AM 11 Now, if there are other false statements made to  
08:56AM 12 customers, that's a different issue. But simply saying, you  
08:56AM 13 know, PCO -- I have license PCO 24, that we're arguing is not a  
08:56AM 14 false statement.

08:56AM 15 And so that's the only argument is that narrow  
08:56AM 16 argument that we're trying to preclude -- Forfeiture Verdict  
08:56AM 17 Number 3 asks whether or not, you know, these items are  
08:56AM 18 proceeds of racketeering activity. And so we're seeking to  
08:56AM 19 preclude the argument that they're proceeds of wire fraud based  
08:56AM 20 on the issuance of the license pursuant to the false statement.  
08:57AM 21 If there's a particular statement made to a customer that the  
08:57AM 22 government contends is false, that's a different issue.

08:57AM 23 But many of these customers were told nothing about  
08:57AM 24 licensing. I mean, they are -- you know, it's the distinction  
08:57AM 25 between -- you know, you hold yourself out as licensed, which

08:57AM 1 they are, each of these entities have a license. It's -- you  
08:57AM 2 know, in holding yourself out as licensing -- as licensed,  
08:57AM 3 you're not saying, I'm complying with every rule about  
08:57AM 4 principal RMES, and my principal RME is on site, and this means  
08:57AM 5 my contract is signed by the person who is authorized to sign  
08:57AM 6 it. All of those representations are not folded into a simple  
08:57AM 7 representation that I'm licensed.

08:57AM 8 You know, so -- and if Mr. Miske signed a contract  
08:57AM 9 instead of Mr. Kansaki, that's not a false statement. So  
08:57AM 10 that's the argument we're trying to preclude.

08:57AM 11 THE COURT: But as much as we know about the jury's  
08:57AM 12 verdict on Count 1, as a subissue within Count 1, the jury was  
08:58AM 13 asked to make findings with regard to the number of acts, if  
08:58AM 14 any, on various types of racketeering activity. Wire fraud  
08:58AM 15 being one of those. And in response to that query and that  
08:58AM 16 responsibility by the jury, they elected a finding of two or  
08:58AM 17 more acts of wire fraud.

08:58AM 18 Now, we don't know what kind of wire fraud. There  
08:58AM 19 were a number of different events that the government cited as  
08:58AM 20 the basis, but that is as much as we know. And now you're  
08:58AM 21 saying that we should tell the jury they can't consider RME  
08:58AM 22 fraud as one of the types of wire fraud that can connect  
08:58AM 23 Mr. Miske's conduct to the various types of property at issue  
08:58AM 24 here?

08:58AM 25 MS. PANAGAKOS: No. I'm not saying the jury should be

08:58AM 1 instructed. I'm saying the government should limit its  
08:58AM 2 instructions to false statements made to customers. I'm not  
08:59AM 3 saying that, you know, because they obtained the license  
08:59AM 4 through alleged false statements, that means the customers were  
08:59AM 5 defrauded. That the argument should be, you know, limited to,  
08:59AM 6 tailored to what false statements were made to customers.

08:59AM 7 THE COURT: Okay. Mr. Inciong, did you want to  
08:59AM 8 respond, or Mr. Akina?

08:59AM 9 MR. INCIONG: Ms. Affinito will.

08:59AM 10 THE COURT: Ms. Affinito, okay.

08:59AM 11 MS. AFFINITO: Thank you, Your Honor. So the purpose  
08:59AM 12 of the forfeiture portion of this trial is to determine whether  
08:59AM 13 property has a sufficient nexus to the crime of conviction,  
08:59AM 14 which is racketeering conspiracy. It's not any sort of  
08:59AM 15 underlying substantive charges or even specific racketeering  
08:59AM 16 acts. It's the general racketeering conspiracy.

08:59AM 17 And the jury may consider any relevant conduct or  
08:59AM 18 evidence that establishes that nexus. Indeed, before the jury  
08:59AM 19 is the entirety of evidence that was presented at trial, which  
08:59AM 20 includes uncharged conduct that served as enterprise proof, as  
09:00AM 21 well as lawful conduct that might have served as evidence of  
09:00AM 22 the conspiracy, as well as all of the evidence surrounding the  
09:00AM 23 RME fraud. They've already heard all of this evidence, and  
09:00AM 24 they're permitted to consider it in determining whether there  
09:00AM 25 is a sufficient nexus.

09:00AM 1                 The government is not limited to specific legal  
09:00AM 2 theories which the jury is not going to be deciding the  
09:00AM 3 sufficiency is of at this stage. And again, it doesn't make  
09:00AM 4 sense to preclude them from hearing additional evidence or  
09:00AM 5 argument on RME fraud when they've already considered it and  
09:00AM 6 potentially convicted the defendant on it.

09:00AM 7                 The RME fraud was presented as a racketeering act, and  
09:00AM 8 we maintain that the way it was presented, it was a different  
09:00AM 9 and legally sufficient theory. It's based on obtaining  
09:00AM 10 money -- not property, not licenses -- it was based on  
09:00AM 11 obtaining money from customers by making misrepresentations to  
09:01AM 12 them. Those misrepresentation happen to be whether the  
09:01AM 13 companies are properly licensed.

09:01AM 14                 But in any event, the government is not limited to  
09:01AM 15 racketeering acts to establish the necessary nexus between  
09:01AM 16 forfeitable property and the racketeering conspiracy. It can  
09:01AM 17 rely on conduct like, for example, the separate DCCA fraud not  
09:01AM 18 presented by the government as wire fraud if it helps establish  
09:01AM 19 that nexus. Thank you.

09:01AM 20                 THE COURT: Anything else with respect to this motion,  
09:01AM 21 not just the RME fraud issue?

09:01AM 22                 MS. PANAGAKOS: Your Honor, just one of the points we  
09:01AM 23 made in our motion is that, you know, we're trying to prevent  
09:01AM 24 an end run around Cleveland. And Cleveland, obviously the  
09:01AM 25 defendants used the license to then conduct their business.

09:01AM 1 And that's, you know, the distinction between -- you can't -- I  
09:01AM 2 mean, you can't just get end run around the case by saying you  
09:01AM 3 can't then use your license. If it's separate false  
09:01AM 4 statements, that's a different story, but the use of a license  
09:01AM 5 is not in itself a false statement. The representation that  
09:01AM 6 you now have the license is not a false statement. That's what  
09:02AM 7 we're trying to preclude. Thank you, Your Honor.

09:02AM 8 THE COURT: Anything else?

09:02AM 9 MS. AFFINITO: No, Your Honor.

09:02AM 10 THE COURT: Motion is denied.

09:02AM 11 Openings. Both sides wish to enter an opening  
09:02AM 12 argument on Phase 2? I assume that to be the case, but maybe I  
09:02AM 13 shouldn't.

09:02AM 14 MR. INCIONG: Yes.

09:02AM 15 THE COURT: All right. I assume they're also  
09:02AM 16 relatively brief?

09:02AM 17 MR. INCIONG: Yes, very.

09:02AM 18 THE COURT: All right. And the defense wishes to make  
09:02AM 19 an opening as well?

09:02AM 20 MS. PANAGAKOS: Yes, Your Honor.

09:02AM 21 And before we start, can -- would it be all right if  
09:02AM 22 Ken Hines sits in this portion of the trial?

09:02AM 23 THE COURT: Who's -- who's Ken Hines?

09:02AM 24 MS. PANAGAKOS: Oh, Ken Hines is the -- our witness.  
09:02AM 25 He testified at the trial, and --

09:02AM 1 THE COURT: We had hundreds of witnesses. I'm sorry,

09:02AM 2 I don't recall who Ken Hines is.

09:02AM 3 MS. PANAGAKOS: Right. He testified as our expert

09:02AM 4 with regard to summaries of tax returns and how much tax was

09:02AM 5 reported, the former IRS agent. And I'm just asking for an

09:02AM 6 exception to the exclusionary rule for this portion of the

09:03AM 7 proceedings, especially in light of the late production of the

09:03AM 8 exhibits, he will be able to help me get ready tonight.

09:03AM 9 THE COURT: Any issue along that?

09:03AM 10 MR. INCIONG: No, Your Honor.

09:03AM 11 THE COURT: Mr. Inciong is saying the government has

09:03AM 12 no problem.

09:03AM 13 MS. PANAGAKOS: Thank you.

09:03AM 14 MR. KENNEDY: I'll go let him know, Your Honor.

09:03AM 15 THE COURT: All right. Let's get the jury in then.

09:03AM 16 And I don't know if we have communicated this yet, but

09:03AM 17 we were able to, as I said we would try to do, secure the

09:03AM 18 presence for the balance of Phase 2 of two alternate jurors.

09:03AM 19 We went down the list, and we only had to go down the list of

09:03AM 20 two -- positions 1 and 2 to secure the two that we needed. So

09:03AM 21 the alternates that you'll see walk in in just a couple of

09:03AM 22 minutes here are Alternates 1 and 2 from Phase 1.

09:03AM 23 Alternates 3 and 4, by the way, have been instructed

09:04AM 24 with the same admonitions that we previously set in the event

09:04AM 25 that we need them. We have not discharged either one of them

09:04AM 1 yet.

09:04AM 2 MR. AKINA: Your Honor, as to the option that you gave

09:04AM 3 the government on whether to call witnesses today or

09:04AM 4 tomorrow --

09:04AM 5 THE COURT: Yes.

09:04AM 6 MR. AKINA: -- we have two witnesses planned for

09:04AM 7 today, and I expect that the estimate we gave the Court is

09:04AM 8 going to be shorter. It's possible that we could wrap it up in

09:04AM 9 less than a day. Our preference would be to wait till tomorrow

09:04AM 10 to start their direct examination. We can go forward with

09:04AM 11 openings today. We leave that up to Your Honor's discretion,

09:04AM 12 but that what we would elect to do.

09:04AM 13 THE COURT: Just openings?

09:04AM 14 MR. AKINA: I think personally it would make sense to

09:04AM 15 do it all at the same time, but I'll leave that up to Your

09:04AM 16 Honor.

09:04AM 17 THE COURT: What do you mean? You mean delay openings

09:04AM 18 till tomorrow?

09:04AM 19 MR. AKINA: Correct. And I'm not asking for that, but

09:05AM 20 I'm just --

09:05AM 21 THE COURT: So what would we accomplish today?

09:05AM 22 Nothing?

09:05AM 23 MR. AKINA: That's what we would accomplish.

09:05AM 24 THE COURT: All right. Then you don't have the

09:05AM 25 option. Those witnesses will be presented today.

09:07AM 1 (Open court in the presence of the jury.)  
09:07AM 2 THE CLERK: Criminal Number 19-00099-DKW-KJM, United  
09:07AM 3 States of America versus Michael J. Miske, Jr.  
09:07AM 4 This case has been called for jury trial, Phase 2,  
09:07AM 5 Day 104.  
09:07AM 6 Counsel, please make your appearances for the record.  
09:07AM 7 MR. INCIONG: Good morning, Your Honor. Mark Inciong,  
09:07AM 8 KeAupuni Akina, Aislinn Affinito, and Michael Nammar for the  
09:07AM 9 United States. Today we have our paralegal Collin Vickers  
09:07AM 10 joining us for the first time, and FBI Special Agent Tom Palmer  
09:07AM 11 is present as well. Good morning.  
09:07AM 12 THE COURT: Good morning.  
09:07AM 13 MR. KENNEDY: Good morning, Your Honor. Michael  
09:07AM 14 Kennedy with Lynn Panagakos, Michael Miske, Ashley King, and  
09:07AM 15 Josh Barry.  
09:07AM 16 Good morning to each of you.  
09:07AM 17 THE COURT: Good morning. You may be seated.  
09:07AM 18 Good morning to our 14-member Phase 2 jury. I hope  
09:07AM 19 everyone was able to get a little bit of rest over the -- what  
09:07AM 20 was a three-day break from this trial at least.  
09:08AM 21 The inception of Phase 2 will begin as the beginning  
09:08AM 22 of Phase 1 began, which is to say the prosecution and the  
09:08AM 23 defense will have an opportunity to address you first through  
09:08AM 24 what is known as an opening statement.  
09:08AM 25 As you now undoubtedly know, an opening statement is

09:08AM 1 an outline of what each party intends to prove and is offered  
09:08AM 2 to help you follow the evidence that is to come over the next  
09:08AM 3 two or three days. What counsel say to you in an opening  
09:08AM 4 statement is not itself evidence. That does not mean, however,  
09:08AM 5 that you should not pay careful attention to what the lawyers  
09:08AM 6 say, because you should. An opening statement may help you to  
09:08AM 7 better understand and follow the evidence.

09:08AM 8 And we'll start with the government.

09:09AM 9 Ms. Affinito.

09:09AM 10 MS. AFFINITO: So good morning and welcome back.  
09:09AM 11 We're here to discuss the forfeiture of Michael Miske's assets  
09:09AM 12 due to their nexus to his criminal racketeering enterprise.  
09:09AM 13 You've already found Mr. Miske guilty of conspiring to engage  
09:09AM 14 in racketeering activity. You've already determined that he  
09:09AM 15 agreed to commit a multitude of racketeering acts. That is the  
09:09AM 16 starting point.

09:09AM 17 So you're going to hear that under our laws there are  
09:09AM 18 three buckets of property that are forfeitable. Any interests  
09:09AM 19 the defendant acquired or maintained as part of a conspiracy is  
09:09AM 20 forfeitable. Mr. Miske's entire interests in the enterprise,  
09:10AM 21 even if you think part of that enterprise was not tainted by  
09:10AM 22 racketeering activity, is forfeitable as is any of the property  
09:10AM 23 that was used to promote or further the affairs of the  
09:10AM 24 enterprise, and finally, any property constituting proceeds of  
09:10AM 25 racketeering activity or derived from those proceeds, whether

09:10AM 1 directly or indirectly, is forfeitable. All of it.

09:10AM 2 Now, sometimes it can be tricky to disentangle what

09:10AM 3 are racketeering proceeds or what someone's interests in an

09:10AM 4 enterprise is or how to trace those proceeds back. Sometimes.

09:10AM 5 But not here. You've heard six months' worth of

09:10AM 6 evidence establishing that Michael Miske's businesses operated

09:10AM 7 to promote and further his criminal enterprise and his

09:10AM 8 racketeering activity. The Miske Enterprise encompassed his

09:10AM 9 entire family of businesses which was built upon fraud upon

09:10AM 10 fraud upon fraud, and through which he engaged in a seemingly

09:11AM 11 endless stream of racketeering activity.

09:11AM 12 Fraudulent RME licenses to get these companies up and

09:11AM 13 running, to maintain their operation, and to deceive customers

09:11AM 14 about their qualifications. Like Kama'aina Termite getting its

09:11AM 15 initial license back in 2000 by lying to the DCCA that Harry

09:11AM 16 Kansaki was going to serve as the principal RME and was a 51

09:11AM 17 percent owner. Forging signatures left and right on contracts,

09:11AM 18 on permits, on license applications, on documents to obtain

09:11AM 19 pesticides, underreporting income from Mr. Miske's businesses

09:11AM 20 on his tax returns, and then using that unreported income to

09:11AM 21 fund his extravagant lifestyle, using his house at 6 Lumahai,

09:11AM 22 which was instructed by his own companies as collateral for the

09:11AM 23 bank fraud that he committed, structuring financial

09:11AM 24 transactions for his fishing operation to avoid CTRs and the

09:11AM 25 scrutiny of law enforcement, and using Kama'aina company

09:12AM 1 employees and resources to commit obstruction of justice  
09:12AM 2 against this very court.

09:12AM 3 Michael Miske's companies operated criminally to  
09:12AM 4 promote and further the affairs of his racketeering enterprise,  
09:12AM 5 and everything he acquired, everything his companies generated  
09:12AM 6 through racketeering activity were derived from the proceeds of  
09:12AM 7 it.

09:12AM 8 And on top of the evidence you've already seen and  
09:12AM 9 heard, you're going to see additional evidence of how  
09:12AM 10 particular assets are tied and traced back to the Miske  
09:12AM 11 Enterprise. How Michael Miske acquired and maintained bank  
09:12AM 12 accounts and real estate and other assets through his  
09:12AM 13 racketeering activity. You'll see how he used some of the  
09:12AM 14 assets themselves to promote and further the affairs of his  
09:12AM 15 enterprise like his bank accounts, and you'll see additional  
09:12AM 16 evidence of how he used the racketeering proceeds to purchase  
09:12AM 17 assets like real estate, luxury vehicles, boats, and artwork.

09:12AM 18 You're also going to get additional jury instructions  
09:13AM 19 from the Court later, but for this forfeiture phase you're  
09:13AM 20 going to consider the evidence under a completely different  
09:13AM 21 standard than before, and it's a much lower burden of proof.  
09:13AM 22 As you'll hear, you're not being asked to decide anything  
09:13AM 23 beyond a reasonable doubt. The applicable burden of proof here  
09:13AM 24 is a much lower standard called preponderance of the evidence,  
09:13AM 25 and it basically means more probably true than not.

09:13AM 1 So the United States is seeking to forfeit Mr. Miske's  
09:13AM 2 real estate assets, boats, cars, artwork, and money from his  
09:13AM 3 personal and business bank accounts. And at the end of this  
09:13AM 4 much shorter trial, we will ask that you find all of these  
09:13AM 5 assets forfeitable as property that Mr. Miske acquired and  
09:13AM 6 maintained through racketeering activity, that was used to  
09:13AM 7 promote and further the affairs of the enterprise, and that  
09:13AM 8 constitutes or was derived from proceeds of his racketeering  
09:14AM 9 activity. Thank you.

09:14AM 10 THE COURT: Mr. Kennedy or Ms. Panagakos for the  
09:14AM 11 defense, please.

09:14AM 12 MS. PANAGAKOS: Good morning, ladies and gentlemen.  
09:14AM 13 Among the instructions you'll be given is to -- that you'll be  
09:14AM 14 told that the previous instructions that you were provided last  
09:14AM 15 week continue to govern, and one of those instructions -- well,  
09:14AM 16 those instructions concerning racketeer -- racketeering  
09:14AM 17 activity continue to govern.

09:14AM 18 Like Ms. Affinito said, there are three buckets  
09:14AM 19 whether an interest was acquired -- whether an asset was  
09:14AM 20 acquired or maintained in violation of Count 1, whether it's  
09:14AM 21 proceeds of Count 1. And the proceeds you'll see in the  
09:14AM 22 special verdict form, you're going to be asked whether it's  
09:14AM 23 proceeds of racketeering activity. And that's why I bring your  
09:15AM 24 attention to remembering that instruction.

09:15AM 25 And then when you look at the assets, there's a number

09:15AM 1 of assets, like Ms. Affinito said, and a number of them are  
09:15AM 2 tied to the four and a half million dollars that Kama'aina  
09:15AM 3 Termite and Pest Control earned on the Keola La'i condominium  
09:15AM 4 job.

09:15AM 5 Now, with regard to licensing, there was no evidence  
09:15AM 6 presented to you as to what Mr. Harry Kansaki's ownership was  
09:15AM 7 in the company in 2000. The earliest tax returns where  
09:15AM 8 Mr. Miske reported a hundred percent ownership I believe were  
09:15AM 9 in 2009 or 2010. Mr. Hughford Manolo said that Mr. Kansaki was  
09:15AM 10 in fact the RME in the earlier years, and he was present and  
09:15AM 11 supervised and worked directly with Mr. Manolo. So we don't  
09:15AM 12 know. It's not accurate -- there is no evidence to support the  
09:15AM 13 assertion that the license was obtained by fraud to begin with.

09:16AM 14 Now, with regard to the Nordic Construction job, at  
09:16AM 15 that time Mr. Miske was the owner of Kama'aina Termite. He  
09:16AM 16 reported that to the IRS, and he had his own pest control  
09:16AM 17 operator's license and he was an RME of Kama'aina Termite and  
09:16AM 18 Pest Control. He held himself out as the president and person  
09:16AM 19 in charge of Kama'aina Termite in all his dealings with Nordic  
09:16AM 20 Construction. They were never deceived about the existence of  
09:16AM 21 some other person. He was the person that they thought was in  
09:16AM 22 charge, and he was in fact in charge and he was licensed to be  
09:16AM 23 in charge.

09:16AM 24 They were not -- if you'll recall Instruction 42,  
09:16AM 25 which talks about whether or not Nordic Construction was

09:16AM 1 defrauded, which goes to whether or not its proceeds of  
09:16AM 2 racketeering activity, they were never deceived about the  
09:16AM 3 nature of their bargain. That was in the instruction. In  
09:16AM 4 order to be wire fraud, in order to be proceeds of that  
09:16AM 5 racketeering activity, Nordic Construction would've had to have  
09:16AM 6 been deceived about the essential nature of the bargain. They  
09:17AM 7 weren't. They bargained to -- for the service of Kama'aina  
09:17AM 8 Termite, a company they knew to be managed by Mr. Miske, and  
09:17AM 9 they got a successful fumigation job.

09:17AM 10 So what was purchased with money from that job that  
09:17AM 11 you'll be asked to render forfeiture verdict on, one is the  
09:17AM 12 Rachel, the commercial fishing boat. That boat operated  
09:17AM 13 lawfully. You heard from Frank Crivello about the lawful  
09:17AM 14 fishing activities that that boat derived its income from.  
09:17AM 15 There was an issue as to how workers were paid, but that -- the  
09:17AM 16 payment to workers is not -- those were monies out. Those  
09:17AM 17 weren't proceeds in, and it didn't -- it wasn't relevant to how  
09:17AM 18 the Rachel was acquired or maintained in the ownership of the  
09:17AM 19 Kama'aina family of businesses. They didn't keep it free  
09:18AM 20 structuring, and they didn't use proceeds of any illegal act to  
09:18AM 21 keep it. They purchased it outright. Kama'aina Holdings was  
09:18AM 22 the entity that purchased it outright for 900-something  
09:18AM 23 thousand dollars with money from the Nordic job.

09:18AM 24 So we're asking you to find that Nordic money  
09:18AM 25 untainted because that job was a success. That company got the

09:18AM 1 benefit of its bargain. They were not deceived. There was  
09:18AM 2 never an intent to cheat Nordic. And that's how the Rachel was  
09:18AM 3 purchased.

09:18AM 4 And then the Rachel engaged in fishing -- commercial  
09:18AM 5 fishing activity for many years, and then that derived income  
09:18AM 6 that was fully reported on the tax returns. And then with that  
09:18AM 7 money the Boston Whaler was purchased, the Painkiller. And  
09:18AM 8 that was purchased in 2016. There is no nexus between that  
09:18AM 9 boat and the alleged -- and the structuring. The structuring  
09:18AM 10 that was presented to you took place from 2012 to 2014. This  
09:18AM 11 boat, the Painkiller, was purchased in 2016 with a down payment  
09:19AM 12 from fishing revenues alone, and alone that was repaid with  
09:19AM 13 fishing revenues, lawful money.

09:19AM 14 A third asset that was purchased with the Nordic  
09:19AM 15 Construction money is a residence on Paokano Loop in Kailua.  
09:19AM 16 That was purchased with Nordic Construction money, and then  
09:19AM 17 it -- it paid for itself largely with rental income, rental  
09:19AM 18 income from that property.

09:19AM 19 So that is one bucket of assets that we would ask you  
09:19AM 20 to find not subject to forfeiture for those reasons, and for  
09:19AM 21 additional reasons as the evidence is presented and during  
09:19AM 22 closing.

09:19AM 23 There's another bucket of assets which is the bank  
09:19AM 24 accounts. Those bank accounts -- there were bank accounts that  
09:19AM 25 were -- funds from bank accounts were seized in July 2020. So

09:19AM 1 the money in those bank accounts were from, you know, the time  
09:19AM 2 period prior to 2020. There are two Kama'aina Termite and Pest  
09:19AM 3 Control accounts, there's an O'ahu Termite and Pest management  
09:20AM 4 account, a plumbing account and a personal account.

09:20AM 5 So the Kama'aina Termite and Pest Control accounts  
09:20AM 6 were generated -- and the revenues -- I believe the evidence is  
09:20AM 7 going to show that the money in the Kama'aina Termite bank  
09:20AM 8 accounts were revenues earned from fumigation and pest control  
09:20AM 9 jobs, nothing else.

09:20AM 10 And at that time period Delia Fabro-Miske was the RME.  
09:20AM 11 There's been no evidence that she -- that there were any false  
09:20AM 12 statements made to anyone with regard to the -- her license.  
09:20AM 13 The company held itself out as licensed. It was licensed with  
09:20AM 14 PCO824 from the beginning to the end.

09:20AM 15 And so those revenues we'd ask you to find to be  
09:20AM 16 lawfully earned, not acquired or maintained in violation of  
09:20AM 17 RICO and not the proceeds of any racketeering activity.

09:20AM 18 Oahu Termite and Pest Management, that covers a time  
09:20AM 19 period when Michael Worden was the RME. Now, he admits he was  
09:21AM 20 the RME until -- and he moved away at a certain period of time,  
09:21AM 21 and he didn't remove himself as the RME. So the time period  
09:21AM 22 governing the funds in that account are when Michael Worden was  
09:21AM 23 the RME. He testified he was, and whether or not he was in  
09:21AM 24 compliance with the rules regarding the RME when he moved away,  
09:21AM 25 there were no statements made to customers who paid O'ahu

09:21AM 1 Termite for its services with regard to that. So there was no  
09:21AM 2 intent to cheat Oahu Termite and Pest Management customers.  
09:21AM 3 They paid for services that were rendered, and that money is  
09:21AM 4 not acquired or maintained in violation of the RICO statute,  
09:21AM 5 the Count 1 -- in violation of Count 1.

09:21AM 6 And then there's Mr. Miske's personal account which  
09:21AM 7 has money, that I think will be presented as a commingled  
09:21AM 8 account, so there will be money that is simply untainted by any  
09:21AM 9 argument. There will be money that comes from Kama'aina  
09:22AM 10 Holdings, which is fishing revenues, which the fishing activity  
09:22AM 11 was lawful, and then money from the Kama'aina Termite  
09:22AM 12 fumigations.

09:22AM 13 One big job that relates to these -- the Kama'aina  
09:22AM 14 Termite money and an asset purchased with it, one asset is the  
09:22AM 15 Ferrari. The Ferrari was purchased with funds from the  
09:22AM 16 Maunakea job. The Maunakea contract was signed by Delia, the  
09:22AM 17 RME. The job was performed. There were issues that couldn't  
09:22AM 18 be resolved because of the charges in this case, but there was  
09:22AM 19 no fraud. The Maunakea -- there was no fraud, there was no  
09:22AM 20 deception of Maunakea. Kama'aina Termite, a licensed company,  
09:22AM 21 bid the job, got the job, performed the work to the best of its  
09:22AM 22 ability, and couldn't finish with its warranty work because of  
09:22AM 23 this case. But that's where the Ferrari comes from.

09:22AM 24 There are other vehicles. There's a red Volkswagen.  
09:22AM 25 You saw pictures of a young Mr. Miske with his girlfriend Andi

09:22AM 1 at the time and a young Caleb. That vehicle was purchased  
09:23AM 2 sometime in the '90s before any evidence of tainted funds at  
09:23AM 3 all. The green Volkswagen, which was turned into a tribute  
09:23AM 4 car, the 1951 green Volkswagen, and it was originally red, but,  
09:23AM 5 anyway, it was purchased in 2009, again before any of the  
09:23AM 6 evidence of the monies in this case.

09:23AM 7 So the collective vehicles, that was a personal hobby.  
09:23AM 8 I'm not talking about the Hawaii Partners vehicles. I'm  
09:23AM 9 talking about collector -- the Volkswagens, the ones you saw  
09:23AM 10 pictures of, those are personal collector vehicles that were  
09:23AM 11 purchased with personal funds outside of the affairs of the  
09:23AM 12 RICO conspiracy.

09:23AM 13 And then there's gifts which have no connection to any  
09:23AM 14 taint at all. You heard from the artist Slick as to gifts that  
09:23AM 15 he supplied, and they're seeking to forfeit those as well, and  
09:23AM 16 we'd ask you to, you know, find that those are not subject to  
09:23AM 17 forfeiture because they're untainted gifts. And there are  
09:24AM 18 other artworks which are gifts as well. Thank you.

09:24AM 19 THE COURT: The exclusionary rule continues to apply  
09:24AM 20 to this Phase 2, with the exception of Mr. Hines with the  
09:24AM 21 government's consent.

09:24AM 22 Is the government prepared for as its first witness?

09:24AM 23 MS. AFFINITO: Yes, Your Honor. The government calls  
09:24AM 24 Crystal Young.

09:24AM 25 THE CLERK: Please raise your right hand.

09:24AM 1 CRYSTAL YOUNG,  
09:24AM 2 called as a witness, having been first duly sworn, was examined  
09:24AM 3 and testified as follows:  
09:24AM 4 THE CLERK: Please state your name, spelling your last  
09:25AM 5 name for the record.  
09:25AM 6 THE WITNESS: Crystal Young, Y-O-U-N-G.  
09:25AM 7 DIRECT EXAMINATION  
09:25AM 8 BY MS. AFFINITO:  
09:25AM 9 Q Good morning.  
09:25AM 10 A Good morning.  
09:25AM 11 Q Ms. Young, would you please remind the jury what you do.  
09:25AM 12 A I'm a revenue agent with the Internal Revenue Service.  
09:25AM 13 Q And you work out of the LA field office?  
09:25AM 14 A Yes.  
09:25AM 15 Q And you previously testified at trial about your review of  
09:25AM 16 accounting and tax records; is that correct?  
09:25AM 17 A Yes.  
09:25AM 18 Q So I want to direct your attention to the work that  
09:25AM 19 Kama'aina Termite did for the Keola La'i job. Are you familiar  
09:25AM 20 with the payments that Kama'aina Termite received in connection  
09:25AM 21 with this work?  
09:25AM 22 A Yes.  
09:25AM 23 Q And how were those payments received?  
09:25AM 24 A A couple of the payments were directly deposited -- or put  
09:25AM 25 into the bank account of Kama'aina Termite, and then three

09:25AM 1 payments were also put into the Title Guaranty escrow account.

09:26AM 2 Q Okay. And what happened to the three payments that were

09:26AM 3 put in the escrow account?

09:26AM 4 A They were eventually disbursed.

09:26AM 5 Q Okay. And I guess, was there any activity before they

09:26AM 6 were disbursed?

09:26AM 7 A Yes, they were put into an interest-bearing bank account

09:26AM 8 for the -- on behalf of Kama'aina Termite.

09:26AM 9 Q Okay. And then did you review records of the Keola La'i

09:26AM 10 escrow account, other bank account records and accounting

09:26AM 11 records, to determine where the payments were ultimately

09:26AM 12 disbursed?

09:26AM 13 A Yes.

09:26AM 14 Q And did you prepare a summary of those records focusing on

09:26AM 15 transactions that you determined to be relevant to this

09:26AM 16 forfeiture proceeding?

09:26AM 17 A Yes.

09:26AM 18 MS. AFFINITO: I'd like to show the witness only

09:26AM 19 Government's Exhibit 11-3 from the -- I believe it's the 47th

09:26AM 20 supplement.

09:26AM 21 THE COURT: Go ahead.

09:28AM 22 MS. AFFINITO: Looks like we're having a problem. We

09:28AM 23 can use the ELMO.

09:28AM 24 BY MS. AFFINITO:

09:28AM 25 Q All right. So can you see the document that I've placed

09:29AM 1 under the ELMO?

09:29AM 2 A Yes.

09:29AM 3 Q Okay. Is this a copy of the summary that you've prepared?

09:29AM 4 A Yes.

09:29AM 5 Q Okay. And does it show how payments were received from

09:29AM 6 the Keola La'i job into the escrow account?

09:29AM 7 A Yes.

09:29AM 8 Q And then does it show the accounts and destinations into

09:29AM 9 which those payments were ultimately disbursed?

09:29AM 10 A Yes.

09:29AM 11 MS. AFFINITO: Your Honor, we would move to admit and

09:29AM 12 publish Exhibit 11-3.

09:29AM 13 THE COURT: Any objection?

09:29AM 14 MS. PANAGAKOS: No objection, Your Honor.

09:29AM 15 THE COURT: 11-3 is admitted then without objection.

09:29AM 16 You may publish it.

09:29AM 17 (Exhibit 11-3 was received in evidence.)

09:29AM 18 BY MS. AFFINITO:

09:29AM 19 Q So there are a number of columns here. Could you walk the

09:29AM 20 jury through what these columns show?

09:29AM 21 A Yes. The first column is the date, and that's the date

09:29AM 22 the transaction was initiated. Payer or payee, that's either

09:29AM 23 who the money is coming from or going to. Receipts, what was

09:30AM 24 deposited into the escrow account. Disbursements, what were

09:30AM 25 paid out of the escrow account. And then the last column is

09:30AM 1 disbursement destinations, so where the money eventually  
09:30AM 2 landed.

09:30AM 3 Q Okay. Now, does this show all of the transactions that  
09:30AM 4 were in the escrow account?

09:30AM 5 A No.

09:30AM 6 Q Okay. And so which ones are not shown here?

09:30AM 7 A It's not showing the money that's transferred to the  
09:30AM 8 interest-bearing bank account and then back. And it's not  
09:30AM 9 showing a handful of transactions. There is a fee to the  
09:30AM 10 escrow company, there is a payment out to Kama'aina Rolloff,  
09:30AM 11 and then a payment made to a title company on behalf of  
09:30AM 12 Mr. Dahl.

09:30AM 13 Q Okay. So here, the first three rows show payments into  
09:30AM 14 the escrow count by Nordic PCL, correct?

09:30AM 15 A Correct.

09:30AM 16 Q So those were payments for the Keola La'i job; is that  
09:31AM 17 right?

09:31AM 18 A That's right.

09:31AM 19 Q Okay. And the remaining entries here then show where  
09:31AM 20 those payments from the escrow account went; is that correct?

09:31AM 21 A Correct.

09:31AM 22 Q Okay. So did some of the money from the Keola La'i job go  
09:31AM 23 into Mike Miske's personal bank accounts?

09:31AM 24 A Yes.

09:31AM 25 Q And approximately how much?

09:31AM 1 A A little -- a little over 470,000.

09:31AM 2 Q Okay. And did some of the money go into various Leverage

09:31AM 3 bank accounts?

09:31AM 4 A Yes.

09:31AM 5 Q And how much?

09:31AM 6 A 1,050,000.

09:31AM 7 Q Okay. And then did some of it go into Kama'aina Termite

09:31AM 8 and Pest Control's bank accounts?

09:31AM 9 A Yes.

09:31AM 10 Q And how much was that?

09:31AM 11 A 300,000.

09:31AM 12 Q Okay. So I don't know if I'll be able to zoom in on this,

09:31AM 13 but do you see on -- here on February 24th, 2011, there's a

09:32AM 14 \$150,000 disbursement to Pacific Rim Bank, correct?

09:32AM 15 A Correct.

09:32AM 16 Q And what is that payment for?

09:32AM 17 A That's a payment on the Pacific Rim loan for the land at

09:32AM 18 6 Lumahai.

09:32AM 19 MS. AFFINITO: Okay. I'd like to now show the witness

09:32AM 20 only Exhibit 11-11 from the 47th supplement.

09:32AM 21 THE COURT: Go ahead.

09:32AM 22 BY MS. AFFINITO:

09:32AM 23 Q Can you see that?

09:32AM 24 A Yes.

09:32AM 25 Q Okay. So is this a copy of the \$150,000 check out of the

09:32AM 1 Keola La'i escrow account that was disbursed to Pacific Rim  
09:32AM 2 Bank?  
09:32AM 3 A Yes.  
09:32AM 4 Q And this is you said in connection with a Pacific Rim Bank  
09:32AM 5 loan for the land at 6 Lumahai, correct?  
09:33AM 6 A Correct.  
09:33AM 7 MS. AFFINITO: Your Honor, I would move to admit and  
09:33AM 8 publish Exhibit 11-11. There's a certification at 11-7.  
09:33AM 9 THE COURT: Any objection?  
09:33AM 10 MS. PANAGAKOS: No objection.  
09:33AM 11 THE COURT: 11-11 is admitted then. You may publish.  
09:33AM 12 (Exhibit 11-11 was received in evidence.)  
09:33AM 13 BY MS. AFFINITO:  
09:33AM 14 Q So if we look, I guess, first at the top portion here,  
09:33AM 15 this shows this was a loan payment by Michael Miske to Pacific  
09:33AM 16 Rim Bank, correct?  
09:33AM 17 A Correct.  
09:33AM 18 Q And then you can see the disbursement in this check, this  
09:33AM 19 is the \$150,000 check below there, correct?  
09:33AM 20 A Correct.  
09:33AM 21 Q Okay. And so I don't know if it's easy to see here, but  
09:33AM 22 the date on this check is February 24th, 2011, correct?  
09:33AM 23 A Correct.  
09:33AM 24 Q And so that corresponds with -- it matches the escrow  
09:33AM 25 account date, correct?

09:33AM 1 A Correct.

09:33AM 2 Q Okay. So on the check here, right below it there's a

09:33AM 3 different date, March 7th, 2011. What does that mean?

09:34AM 4 A That's the date that Pacific Rim would have processed it.

09:34AM 5 There is very effectually lag time between when a check is

09:34AM 6 written to when it finally gets cashed or processed.

09:34AM 7 MS. AFFINITO: I'd like to now show the witness only

09:34AM 8 Exhibit 11-8 from the 47th supplement.

09:34AM 9 THE COURT: Yes, go ahead.

09:34AM 10 BY MS. AFFINITO:

09:34AM 11 Q Okay. So is this a copy of a history of loan payments by

09:34AM 12 Michael Miske on the -- to Pacific Rim Bank on that loan for

09:34AM 13 the land at 6 Lumahai?

09:34AM 14 A Yes.

09:34AM 15 MS. AFFINITO: Your Honor, I would move to admit and

09:34AM 16 publish Exhibit 11-8. There's a certification at 11-7.

09:34AM 17 THE COURT: Any objection?

09:34AM 18 MS. PANAGAKOS: No objection.

09:35AM 19 THE COURT: 11-8 is admitted then. You may publish.

09:35AM 20 (Exhibit 11-8 was received in evidence.)

09:35AM 21 Q So if we first look at the top portion here, so this

09:35AM 22 identifies Michael J. Miske, Jr., correct?

09:35AM 23 A Correct.

09:35AM 24 Q And this document, it says it's a loan history record,

09:35AM 25 correct?

09:35AM 1 A Correct.

09:35AM 2 Q Related to Pacific Rim Bank?

09:35AM 3 A Correct.

09:35AM 4 Q And this loan, it says it's for a first mortgage, vacant

09:35AM 5 land at 6 Lumahai Street; is that correct?

09:35AM 6 A Correct.

09:35AM 7 Q Okay. And then if we look at the bottom here, is this

09:35AM 8 dated March 7th, and there's an amount here \$150,000, does this

09:35AM 9 correspond to the \$150,000 payment out of the Keola La'i escrow

09:35AM 10 account?

09:35AM 11 A Yes.

09:35AM 12 Q Okay. And so here they're using the processing date as

09:36AM 13 opposed to the initiation date, correct?

09:36AM 14 A Correct.

09:36AM 15 Q Okay. So this \$150,000 payment on the loan for the land

09:36AM 16 at 6 Lumahai was ultimately sourced from Kama'aina Termite and

09:36AM 17 Pest Control, correct?

09:36AM 18 A Correct.

09:36AM 19 Q Okay. So it was -- specifically, it came from money that

09:36AM 20 Kama'aina Termite received for the Keola La'i job, correct?

09:36AM 21 A Correct.

09:36AM 22 Q Okay. And based on your review of the loan documents and

09:36AM 23 accounting and tax records, did Mr. Miske identify any uses for

09:36AM 24 the 6 Lumahai land aside from building the property on it?

09:36AM 25 A Yes. In the mun (sic) documents it stated that he would

09:36AM 1 be using it for rental storage of equipment, specifically for  
09:36AM 2 Kama'aina Plumbing and Kama'aina Termite.  
09:36AM 3 Q Okay. And I can show you again --  
09:36AM 4 MS. AFFINITO: Publish Exhibit 11-3, which is already  
09:37AM 5 admitted.  
09:37AM 6 THE COURT: Yes.  
09:37AM 7 BY MS. AFFINITO:  
09:37AM 8 Q So this is that summary we were just looking at that you  
09:37AM 9 made. So you testified earlier that over a million dollars of  
09:37AM 10 the money that you earned from the Keola La'i job went to the  
09:37AM 11 Leverage accounts; is that correct?  
09:37AM 12 A That's correct.  
09:37AM 13 Q And so the first payment here into a Leverage account is  
09:37AM 14 this on February 28th, 2011, correct?  
09:37AM 15 A Correct.  
09:37AM 16 Q It goes to Leverage Entertainment LLC, correct?  
09:37AM 17 A Correct.  
09:37AM 18 Q And it's for \$350,000, correct?  
09:37AM 19 A Correct.  
09:37AM 20 Q And then between October and December of 2011, an  
09:37AM 21 additional \$700,000 of the Keola La'i money gets disbursed to  
09:37AM 22 Leverage accounts; is that correct?  
09:37AM 23 A Correct.  
09:37AM 24 Q And do you know what that money was for?  
09:37AM 25 A That was the first year of Leverage, it's to operate and

09:38AM 1 start the business.

09:38AM 2 Q Okay. So this money is going into Leverage around the

09:38AM 3 time that it's starting up; is that correct?

09:38AM 4 A Correct.

09:38AM 5 Q Okay. And 2011 was the Leverage's first year of

09:38AM 6 operation. Is that what you were testifying to?

09:38AM 7 A Yes, that's correct.

09:38AM 8 Q Okay. And so were these -- these were contributions to

09:38AM 9 Leverage; is that right?

09:38AM 10 A That's right.

09:38AM 11 Q And if we look here on September 27th, 2011, there is a

09:38AM 12 \$556,252.87 disbursement to Title Guaranty Escrow Services; is

09:38AM 13 that right?

09:38AM 14 A Yes.

09:38AM 15 Q So is this the same escrow company who's holding the

09:38AM 16 entire escrow account?

09:38AM 17 A Same company, yes.

09:38AM 18 Q Okay. This disbursement goes to the escrow company,

09:38AM 19 correct?

09:38AM 20 A Yes.

09:38AM 21 Q Okay. So did it actually go to a different office within

09:39AM 22 the escrow company?

09:39AM 23 A Yes.

09:39AM 24 Q Okay. And did you review records to determine what that

09:39AM 25 disbursement was used for?

09:39AM 1 A Yes.

09:39AM 2 Q And what was it used for?

09:39AM 3 A It was the purchase of Paokano Loop property.

09:39AM 4 MS. AFFINITO: If I could show the witness only

09:39AM 5 Exhibit 11-20 from the 47th supplement.

09:39AM 6 THE COURT: Yes, go ahead.

09:39AM 7 BY MS. AFFINITO:

09:39AM 8 Q So can you see this document before you?

09:39AM 9 A Yes.

09:39AM 10 Q Okay. So is this a copy of the final buyer statement for

09:39AM 11 a property purchased by Michael Miske at 614 Paokano Loop?

09:39AM 12 A Yes.

09:39AM 13 Q And does this show a roughly \$556,000 disbursement from

09:39AM 14 that Keola La'i escrow account?

09:39AM 15 A Yes.

09:39AM 16 MS. AFFINITO: Your Honor, I'd move to admit and

09:40AM 17 publish Exhibit 11-20. There's a certification at 11-16.

09:40AM 18 THE COURT: Any objection to 11-20?

09:40AM 19 MS. PANAGAKOS: No objection, Your Honor.

09:40AM 20 THE COURT: That exhibit is then admitted without

09:40AM 21 objection. You may publish it.

09:40AM 22 (Exhibit 11-20 was received in evidence.)

09:40AM 23 BY MS. AFFINITO:

09:40AM 24 Q So if we zoom in here and look at the top. So this is --

09:40AM 25 this is the final buyer's statements for the property at 614

09:40AM 1 Paokano Loop in Kailua, Hawaii; is that right?

09:40AM 2 A Yes.

09:40AM 3 Q And it identifies Michael Miske on this document, correct?

09:40AM 4 A Correct.

09:40AM 5 Q And then again, that same Title Guaranty Escrow Services

09:40AM 6 company, correct?

09:40AM 7 A Correct.

09:40AM 8 Q And if we look a little further down, do you see the

09:40AM 9 deposit of \$556,252.87?

09:41AM 10 A Yes.

09:41AM 11 Q And so that's the exact same amount down to the cent that

09:41AM 12 was disbursed from the Keola La'i escrow account, correct?

09:41AM 13 A Correct.

09:41AM 14 Q And then we see that here, and you see that number down

09:41AM 15 here again as well.

09:41AM 16 A Correct.

09:41AM 17 Q Okay. And here it says "TGES Main Office." Is that the

09:41AM 18 escrow company?

09:41AM 19 A Yes.

09:41AM 20 Q Okay. And so it has this roughly \$556,000 payment, again

09:41AM 21 dated September 27th, 2011; is that right?

09:41AM 22 A That's right.

09:41AM 23 Q And so that's the same date that's identified on the

09:41AM 24 escrow account; is that right?

09:41AM 25 A Correct.

09:41AM 1 Q Okay. So the payment for the purchase of the Paokano Loop  
09:41AM 2 property was ultimately sourced from monies that Kama'aina  
09:41AM 3 Termite received; is that right?  
09:41AM 4 A Correct.  
09:41AM 5 Q And specifically, this money came from money that  
09:41AM 6 Kama'aina Termite received for the Keola job -- Keola La'i job;  
09:41AM 7 is that correct?  
09:41AM 8 A That's correct.  
09:42AM 9 MS. AFFINITO: Nothing further.  
09:42AM 10 THE COURT: Ms. Panagakos.  
09:42AM 11 MS. PANAGAKOS: No, Judge.  
09:42AM 12 THE COURT: All right. Ms. Young, you may step down  
09:42AM 13 subject to cross-examination at a later date.  
09:42AM 14 THE WITNESS: Thank you.  
09:42AM 15 THE COURT: Next witness.  
09:42AM 16 MR. AKINA: The government calls Greg Turner.  
09:43AM 17 THE CLERK: Please raise your right hand.  
09:43AM 18 GREGORY TURNER,  
09:43AM 19 called as a witness, having been first duly sworn, was examined  
09:43AM 20 and testified as follows:  
09:43AM 21 THE CLERK: Please state your full name, spelling your  
09:43AM 22 last name for the record.  
09:43AM 23 THE WITNESS: My name is Gregory Turner, T-U-R-N-E-R.  
09:43AM 24  
09:43AM 25

09:43AM 1 DIRECT EXAMINATION

09:43AM 2 BY MR. AKINA:

09:43AM 3 Q Good morning, Agent Turner.

09:43AM 4 A Good morning.

09:43AM 5 Q Welcome back.

09:43AM 6 Remind the jury, how long have you been with the FBI?

09:43AM 7 A I joined the FBI in July of 2010, graduated the academy

09:43AM 8 in -- I'm sorry, it's coming up on ten years. That's where the

09:43AM 9 ten years came from. So, yeah, I joined the bureau in July of

09:43AM 10 2014, I graduated the academy, and got up here to Honolulu in

09:43AM 11 December of 2014.

09:43AM 12 Q And what do you do for the FBI?

09:43AM 13 A I am a special agent assigned to the white collar crime

09:43AM 14 squad. We investigate financial crimes, public corruption, and

09:43AM 15 then also the evidence response team, senior team leader.

09:44AM 16 Q And in this case did you assist in the seizure of certain

09:44AM 17 properties related to Michael Miske?

09:44AM 18 A I did.

09:44AM 19 Q And around what year did most of those -- or did those

09:44AM 20 seizures take place?

09:44AM 21 A July of 2020.

09:44AM 22 Q Did you also look at financial documents related to some

09:44AM 23 of those properties?

09:44AM 24 A I did.

09:44AM 25 Q I want to ask you some questions about 6 Lumahai.

09:44AM 1 MR. AKINA: If we could pull up Exhibit 9-1374,  
09:44AM 2 already in evidence in the government's 40th list.  
09:44AM 3 THE COURT: Go ahead.  
09:44AM 4 BY MR. AKINA:  
09:44AM 5 Q Going to page 2. And if we focus on just the top portion  
09:45AM 6 of the document. You see here this is a loan amount for  
09:45AM 7 6 Lumahai Street?  
09:45AM 8 A That's correct.  
09:45AM 9 Q And what's the amount?  
09:45AM 10 A 1,175,000.  
09:45AM 11 Q And what was this for?  
09:45AM 12 A This was a loan that was applied for and granted in 2010  
09:45AM 13 to help purchase what was then a vacant lot at 6 Lumahai.  
09:45AM 14 Q So this was an additional funding source to purchase that  
09:45AM 15 land?  
09:45AM 16 A That's correct.  
09:45AM 17 Q And if we zoom out of here, let me just focus on the  
09:45AM 18 primary applicant. Who's -- above, yeah, who's listed there?  
09:45AM 19 A Michael Miske.  
09:45AM 20 MR. AKINA: We can take this down.  
09:45AM 21 BY MR. AKINA:  
09:45AM 22 Q Did you look at mortgage payments made on this loan for  
09:45AM 23 6 Lumahai?  
09:46AM 24 A I did.  
09:46AM 25 Q And where did those payments come from, the money for

09:46AM 1 those payments?

09:46AM 2 A The source of the payments for both the principal and

09:46AM 3 interest came from Kama'aina Termite and Pest Control, and then

09:46AM 4 earlier on there was some interest-only payments that came out

09:46AM 5 of Mr. Miske's personal bank account.

09:46AM 6 Q Did you create a summary of those mortgage payments --

09:46AM 7 A I did.

09:46AM 8 Q -- from 2010 to 2018?

09:46AM 9 A Sorry. Yes, I did.

09:46AM 10 MR. AKINA: And if we could show the witness

09:46AM 11 Exhibit 11-6 from the 47th supplemental list.

09:46AM 12 THE COURT: Yes, go ahead.

09:46AM 13 BY MR. AKINA:

09:46AM 14 Q And is this that summary that you generated?

09:46AM 15 A It is.

09:46AM 16 Q And what does it show?

09:46AM 17 A It shows -- yeah, payments that were made on that loan

09:46AM 18 over the -- over the life of the loan.

09:46AM 19 Q It shows the accounts it came from and the amounts as

09:46AM 20 well?

09:46AM 21 A Yeah, correct. It's an Excel spreadsheet, and, yeah, you

09:47AM 22 have the actual bank account with the last three digits of the

09:47AM 23 bank account number, and then the owner, whether that's

09:47AM 24 Kama'aina Termite or Mr. Miske's personal account.

09:47AM 25 MR. AKINA: I offer Exhibit 11-6 into evidence.

09:47AM 1 THE COURT: Any objection?

09:47AM 2 MR. KENNEDY: No objection.

09:47AM 3 THE COURT: 11-6 is admitted then. You may publish.

09:47AM 4 (Exhibit 11-6 was received in evidence.)

09:47AM 5 MR. AKINA: If we could focus on the top, the heading

09:47AM 6 of the column headers.

09:47AM 7 BY MR. AKINA:

09:47AM 8 Q If you could just walk the jury through what this means.

09:47AM 9 A Yeah, so starting on the left, the account, that's going

09:47AM 10 to be the source bank account. So for example, FHB, First

09:47AM 11 Hawaiian Bank, the bank account ending in 379 or 376. The

09:47AM 12 owner of the account is either going to be Kama'aina Termite or

09:47AM 13 Mike Miske personal, so MM personal. The date can be the date

09:47AM 14 of the payment. The description from the banking records.

09:48AM 15 Check -- check Number/ACH, so some of the payments were checks,

09:48AM 16 some of them were electronic payments, which is what ACH is,

09:48AM 17 and then the payment amount.

09:48AM 18 MR. AKINA: If we can zoom out of this.

09:48AM 19 BY MR. AKINA:

09:48AM 20 Q And so staying on this page 1, looking at the Payment

09:48AM 21 column on the far right, that's roughly \$12,000 payments

09:48AM 22 followed by five or -- four to \$6,000 payments, are those the

09:48AM 23 principal and interest payments you were talking about earlier?

09:48AM 24 A Yes.

09:48AM 25 Q And looking on the second column from the left, are those

09:48AM 1 payments coming out of Kama'aina Termite and Pest Control  
09:48AM 2 accounts as well as Michael Miske's personal accounts?  
09:48AM 3 A Yes.  
09:48AM 4 Q And which one was paying for which?  
09:48AM 5 A Early on the Mike Miske personal accounts were basically  
09:48AM 6 covering the interest only, and the principal payments were the  
09:49AM 7 Kama'aina Termite payments.  
09:49AM 8 Q If we go to page 3 of the document, does that change as  
09:49AM 9 far as money coming out of Michael Miske's personal account?  
09:49AM 10 A Yes. So, you know, at some point, approximately June of  
09:49AM 11 2013, the payments out of Mr. Miske's personal account stopped,  
09:49AM 12 and the remaining payments for the life of the loan come out of  
09:49AM 13 the Kama'aina Termite account.  
09:49AM 14 Q If we go to page 7, which should be the last page. You  
09:49AM 15 said this goes up to 2018. Here we see First Foundation  
09:49AM 16 instead of Pacific Rim Bank. Does that mean that the -- the  
09:49AM 17 loan -- whoever held the loan changed?  
09:49AM 18 A Yes, correct. So First Foundation bought out Pacific Rim  
09:49AM 19 in 2015. So the same loan but the payee changed obviously at  
09:50AM 20 that time.  
09:50AM 21 Q And so monthly, approximately how much in payments was  
09:50AM 22 Kama'aina -- was coming out of the Kama'aina Termite and Pest  
09:50AM 23 Control accounts?  
09:50AM 24 A Towards the end, you know, on this last page,  
09:50AM 25 September 17th through March of '18, approximately -- not

09:50AM 1 approximately -- exactly \$15,000.

09:50AM 2 MR. AKINA: If we could show the witness Exhibit 11-9

09:50AM 3 from the 47th list.

09:50AM 4 THE COURT: Go ahead.

09:50AM 5 BY MR. AKINA:

09:50AM 6 Q Is this an example of a check face of one of those

09:50AM 7 payments that were being made -- or two of those payments that

09:50AM 8 were being made over time?

09:50AM 9 A Yes, one of them.

09:50AM 10 Q If we could go to the second page to the second example.

09:50AM 11 A Yeah, correct. Yes.

09:50AM 12 MR. AKINA: I would offer Exhibit 11-9 into evidence.

09:50AM 13 The certification is at 11-7.

09:50AM 14 THE COURT: Any objection?

09:50AM 15 MR. KENNEDY: No objection.

09:50AM 16 THE COURT: 11-9 is admitted. You may publish.

09:51AM 17 (Exhibit 11-9 was received in evidence.)

09:51AM 18 Q Let me focus on the bottom -- third from the bottom --

09:51AM 19 third to the bottom, sorry, that check.

09:51AM 20 So just by way of example, is this a check from

09:51AM 21 Kama'aina Termite and Pest Control to Pacific Rim Bank?

09:51AM 22 A Yes.

09:51AM 23 Q And it's in the amount of \$12,000?

09:51AM 24 A Yes.

09:51AM 25 Q And then looking in the memo line, what is written there?

09:51AM 1 A "Lease 6 Lumahai."

09:51AM 2 Q Are you aware that there was also supposed to be a lease

09:51AM 3 arrangement where the land was being leased to Kama'aina

09:51AM 4 Termite and Pest Control for storage?

09:51AM 5 A Yes.

09:51AM 6 Q And does this correspond to a line item on the chart that

09:51AM 7 you created?

09:51AM 8 A This check payment does, yes.

09:51AM 9 MR. AKINA: Now, we can take this exhibit down.

09:51AM 10 BY MR. AKINA:

09:51AM 11 Q So based on your review of records, was 6 Lumahai obtained

09:52AM 12 and acquired through using proceeds from Kama'aina Termite and

09:52AM 13 Pest Control?

09:52AM 14 A The loan that was used to partially -- or, yeah, the loan

09:52AM 15 was used to partially acquire the property and, yes, Kama'aina

09:52AM 16 money and Mike Miske's personal account paid down that loan

09:52AM 17 over time.

09:52AM 18 Q I'm going to ask you about 559 Kumukahi Place. What type

09:52AM 19 of building is that?

09:52AM 20 A It's a residence in Hawaii Kai.

09:52AM 21 Q And was that property sold in the amount of \$611,123.60

09:52AM 22 approximately?

09:52AM 23 A Yes, that was the net proceeds after the accompanying

09:52AM 24 mortgage was paid off, but -- yeah.

09:52AM 25 Q And who owned that property prior to the sale?

09:53AM 1 A Michael Miske.

09:53AM 2 Q And do you remember approximately when he acquired that

09:53AM 3 property?

09:53AM 4 A It was at the very end of 2019.

09:53AM 5 Q And to acquire that property initially, were any

09:53AM 6 associates of Michael Miske's used?

09:53AM 7 A Yes.

09:53AM 8 Q Who?

09:53AM 9 A Kaulana Freitas.

09:53AM 10 Q And how was he used?

09:53AM 11 A The -- the home was purchased at a foreclosure auction,

09:53AM 12 and Kaulana Freitas used money from Mike Miske's accounts to

09:53AM 13 actually go to the auction and bid on the house.

09:53AM 14 MR. AKINA: If we could show the witness only

09:53AM 15 Exhibit 11-25 from the 47th list.

09:53AM 16 THE COURT: Go ahead.

09:53AM 17 BY MR. AKINA:

09:53AM 18 Q What is this document we are looking at?

09:53AM 19 A It's a letter from Kaulana Freitas just acknowledging his

09:54AM 20 role in initially, you know, acting as the buyer for Mr. Miske.

09:54AM 21 Q And is it signed by Michael Miske?

09:54AM 22 A It is.

09:54AM 23 Q And is it signed by Kaulana Freitas?

09:54AM 24 A It is.

09:54AM 25 MR. AKINA: I would offer 11-25 into evidence. There

09:54AM 1 is a certification at 11-21.

09:54AM 2 THE COURT: Any objection?

09:54AM 3 MR. KENNEDY: No objection.

09:54AM 4 THE COURT: 11-25 is admitted. You may publish.

09:54AM 5 (Exhibit 11-25 was received in evidence.)

09:54AM 6 Q And the very top, you see this is on Kama'aina Termite and

09:54AM 7 Pest Control letterhead?

09:54AM 8 A Yes.

09:54AM 9 Q And if we focus on the first paragraph, is this what

09:54AM 10 you're describing about Kaulana Freitas being the bidder at the

09:54AM 11 auction?

09:54AM 12 A Yes.

09:54AM 13 Q And then if we go to the second paragraph. Is this an

09:55AM 14 explanation that Kaulana Freitas is then designating Michael

09:55AM 15 Miske to be the buyer of the property?

09:55AM 16 A Yes.

09:55AM 17 Q And was -- were payments -- did payments go through

09:55AM 18 Kaulana Freitas for this property as well?

09:55AM 19 A Yes. So Mr. Miske had four cashier's checks withdrawn

09:55AM 20 from his account, and those cashier's checks were given to

09:55AM 21 Kaulana Freitas. They were written out to him actually, to

09:55AM 22 Kaulana Freitas, again for the purpose of going to the auction

09:55AM 23 and bidding on the house.

09:55AM 24 Q And was that money ultimately applied to the purchase of

09:55AM 25 the home?

09:55AM 1 A It was.

09:55AM 2 Q About how much was that in total?

09:55AM 3 A 140,000.

09:55AM 4 Q Did money go through any other associates of Michael

09:56AM 5 Miske's?

09:56AM 6 A Yes.

09:56AM 7 Q Who?

09:56AM 8 A So basically three buckets of money that were used to

09:56AM 9 purchase Kumukahi. One was the cashier's checks from Kaulana

09:56AM 10 Freitas for \$140,000. There was an additional \$250,000 down

09:56AM 11 payment that came from a checking account, and the signatory on

09:56AM 12 that was Delia Fabro-Miske, and it was a joint account with her

09:56AM 13 and a minor child.

09:56AM 14 Q And were you able to trace money going from both Kaulana

09:56AM 15 Freitas's account and Delia Fabro-Miske's accounts back to

09:56AM 16 Michael Miske's personal account?

09:56AM 17 A The cashier's checks used by Kaulana Freitas and the money

09:56AM 18 from the joint account of Delia Fabro-Miske and her minor

09:56AM 19 child, yes, were traced into the escrow account to buy the

09:56AM 20 house.

09:56AM 21 Q And did those monies go out at different points in time

09:56AM 22 from his accounts?

09:56AM 23 A Yes.

09:57AM 24 Q About how much time elapsed?

09:57AM 25 A Approximately a year.

09:57AM 1 Q Which one went out first?

09:57AM 2 A So the checks came out, you know, at the foreclosure

09:57AM 3 auction, and because it was a foreclosure, I think the escrow,

09:57AM 4 the closing of the property took a lot longer than a normal

09:57AM 5 closing. So, yeah, the checks happened, and then maybe a year

09:57AM 6 later the \$250,000 came into the escrow account.

09:57AM 7 Q So the checks from Kaulana Freitas, those came out first?

09:57AM 8 A Yes.

09:57AM 9 Q And for those checks, were you able to trace where that

09:57AM 10 came from from Mr. Miske's account?

09:57AM 11 A Yes.

09:57AM 12 Q Where did that come from?

09:57AM 13 A So that was sourced from -- okay, in 2018, Mr. Miske got a

09:57AM 14 refinanced loan from Bank of Hawaii and took some cash out from

09:57AM 15 that refinance loan. And so the -- some of the funds that were

09:58AM 16 used from that refinanced loan were used to get the cashier's

09:58AM 17 checks that Kaulana Freitas used to buy the house.

09:58AM 18 Q So proceeds from the Bank of Hawaii loan at 6 Lumahai,

09:58AM 19 where 6 Lumahai was the collateral, those proceeds were used in

09:58AM 20 part to purchase Kumukahi Place?

09:58AM 21 A That's correct.

09:58AM 22 Q Did you --

09:58AM 23 MR. AKINA: Can we show the witness Exhibit 11-22 from

09:58AM 24 the 47th list?

09:58AM 25 THE COURT: Go ahead.

09:58AM 1 BY MR. AKINA:

09:58AM 2 Q And what is this document?

09:58AM 3 A This is a settlement statement. So, yeah, when the house

09:58AM 4 closed, it's just kind of an accounting basically of the money

09:58AM 5 in and out, and who owes what to document the purchase of the

09:58AM 6 property.

09:58AM 7 Q Does it also document those deposits -- those payments

09:58AM 8 that you just described?

09:58AM 9 A It does.

09:58AM 10 MR. AKINA: I'd offer Exhibit 11-22 into evidence.

09:59AM 11 There's a certification at 11-21.

09:59AM 12 THE COURT: Any objection to 11-22?

09:59AM 13 MR. KENNEDY: No objection.

09:59AM 14 THE COURT: That exhibit then is admitted. You may

09:59AM 15 publish it.

09:59AM 16 (Exhibit 11-22 was received in evidence.)

09:59AM 17 Q If we could focus on the third box from the top. So this

09:59AM 18 is the settlement statement for that Kumukahi Place; is that

09:59AM 19 correct?

09:59AM 20 A Yes.

09:59AM 21 Q And who's listed as the buyer on this?

09:59AM 22 A Michael John Miske, Jr., and Delia Miske.

09:59AM 23 Q And you said it was purchased around towards the end of

09:59AM 24 2019, December 31st, 2019, to be exact?

09:59AM 25 A Yes.

09:59AM 1 Q If we can zoom out of this.

09:59AM 2 If we focus on the first portion of that last box

09:59AM 3 under "Financial." It shows the sale price was 1.4 million for

10:00AM 4 the home?

10:00AM 5 A That's correct.

10:00AM 6 Q And then there are two deposits here. Are these the two

10:00AM 7 deposits you were talking about?

10:00AM 8 A Yes.

10:00AM 9 Q Okay. So the \$140,000 that came through the Law Office of

10:00AM 10 James Dandar, was that the Kaulana Freitas checks?

10:00AM 11 A Yes.

10:00AM 12 Q And the 250,000 you talked about, it says Michael Miske

10:00AM 13 here, but it came through Delia Fabro-Miske's account?

10:00AM 14 A That's correct.

10:00AM 15 Q Were you able to sort of chart out the different accounts

10:00AM 16 and the flow of the funds?

10:00AM 17 A I was.

10:00AM 18 MR. AKINA: If we could show the witness Exhibit 11-34

10:00AM 19 from the 47th list.

10:00AM 20 THE COURT: Go ahead.

10:00AM 21 BY MR. AKINA:

10:00AM 22 Q Is this that chart, the flow of the funds that you

10:00AM 23 created?

10:00AM 24 A It is.

10:00AM 25 MR. AKINA: I'd offer Exhibit 11-34 into evidence.

10:00AM 1 THE COURT: Any objection?

10:01AM 2 MR. KENNEDY: No objection.

10:01AM 3 THE COURT: 11-34 is admitted. You may publish it.

10:01AM 4 (Exhibit 11-34 was received in evidence.)

10:01AM 5 Q Okay. So the -- you said there were three buckets of

10:01AM 6 payments, is that -- that's depicted here?

10:01AM 7 A Yes.

10:01AM 8 Q Under the Escrow column, the \$140,000, \$250,000, and over

10:01AM 9 1 million?

10:01AM 10 A Right.

10:01AM 11 Q So this top row that starts on the left, "From BOH refi 6

10:01AM 12 Lumahai," which -- which person did these go through?

10:01AM 13 A So, yeah, looking at the right column, right, so the

10:01AM 14 \$140,000 was sourced left to right. So the top chunk of money

10:01AM 15 is the chunk of money that Kaulana Freitas was involved in.

10:01AM 16 Q And so just working through, can you explain to the jury

10:01AM 17 the path that the money took?

10:01AM 18 A Yeah, so if you start in the top left, you have the Bank

10:02AM 19 of Hawaii refinance loan. Some of those proceeds went into --

10:02AM 20 I'm sorry, all of those proceeds went into Mr. Miske's Bank of

10:02AM 21 Hawaii account ending in 729, and then some of those proceeds

10:02AM 22 were used to purchase the cashier's checks that totaled

10:02AM 23 \$140,000 that were written out to Kaulana Freitas.

10:02AM 24 And then Kaulana Freitas goes to the foreclosure

10:02AM 25 auction and has to put 10 percent down, right. 10 percent of

10:02AM 1 1.4 million is 140,000, and so that's the first -- that top  
10:02AM 2 row.

10:02AM 3 MR. AKINA: And if we can show Exhibit 11-19 to the  
10:02AM 4 witness.

10:02AM 5 THE COURT: Yes, go ahead.

10:02AM 6 BY MR. AKINA:

10:02AM 7 Q What are we looking at here?

10:02AM 8 A So this is a -- kind of a subset or a portion of a  
10:03AM 9 previous exhibit, but, yeah, it's -- it shows the Bank of  
10:03AM 10 Hawaii refinance loan money coming into Mr. Miske's personal  
10:03AM 11 account, and then the disbursements that were made subsequent  
10:03AM 12 to that.

10:03AM 13 Q So this would show the money coming in, and then also the  
10:03AM 14 money going out from that chart?

10:03AM 15 A Yes.

10:03AM 16 Q And is this a summary of the underlying documents --

10:03AM 17 A It is.

10:03AM 18 Q -- for that loan?

10:03AM 19 A It is.

10:03AM 20 MR. AKINA: I would offer Exhibit 11-19 into evidence.

10:03AM 21 THE COURT: Any objection to 11-19?

10:03AM 22 MR. KENNEDY: Your Honor, no objection, but the -- I  
10:03AM 23 would ask that the last entry that's not paged, the last entry  
10:03AM 24 on the last page just be blackened out.

10:03AM 25 THE COURT: Any objection to that?

10:04AM 1 MR. AKINA: No objection to that.

10:04AM 2 THE COURT: This is one of the entries dated

10:04AM 3 July 24th, 2018?

10:04AM 4 MR. AKINA: I believe it's a July 26, 2018 entry.

10:04AM 5 THE COURT: I see. I was missing one page.

10:04AM 6 All right. Without objection then, 11-19 is admitted

10:04AM 7 with the caveat that the final entry -- I was looking for a

10:04AM 8 page number. It doesn't look like this document has page

10:04AM 9 numbers, but the final entry dated July 26, 2018, will be

10:04AM 10 admitted -- will be deleted -- excuse me -- redacted before it

10:04AM 11 goes back to the jury.

10:04AM 12 (Exhibit 11-19 was received in evidence.)

10:04AM 13 MR. KENNEDY: And, Your Honor, since I'm looking at it

10:04AM 14 on my computer, it looks like it totals 15 pages in total.

10:05AM 15 THE COURT: Okay, thank you.

10:05AM 16 MR. KENNEDY: You're welcome.

10:05AM 17 THE COURT: It appears on the final page.

10:05AM 18 MR. AKINA: Permission to publish?

10:05AM 19 THE COURT: Yes.

10:05AM 20 BY MR. AKINA:

10:05AM 21 Q Okay. So this is a summary of Michael Miske's personal

10:05AM 22 accounts at the time?

10:05AM 23 A That's correct.

10:05AM 24 Q And if we focus on the top left corner with the gray

10:05AM 25 boxes, and this was at which bank?

10:05AM 1 A Bank of Hawaii.

10:05AM 2 Q And if we go -- zoom out of this.

10:05AM 3 On the far right column, what is that? If we zoom on

10:05AM 4 that header beginning "Non-loan funds."

10:05AM 5 A Right, so Mr. Miske had some money in his bank account

10:05AM 6 prior to the loan proceeds coming in. So prior to the loan

10:06AM 7 proceeds, he had \$231,278.89 in that account. So this heading

10:06AM 8 in this column shows the money that was in the account, yeah,

10:06AM 9 prior to those loan proceeds coming in.

10:06AM 10 MR. AKINA: And so if we zoom out of here, if we focus

10:06AM 11 on the balance and just the first row underneath balance in the

10:06AM 12 middle of the page. Just the first two rows.

10:06AM 13 BY MR. AKINA:

10:06AM 14 Q Okay. This is what you're talking about, how it starts at

10:06AM 15 \$231,000 approximately?

10:06AM 16 A Correct.

10:06AM 17 Q And then the next number, this is the balance,

10:06AM 18 2.1 million; is that correct?

10:06AM 19 A Right, yeah, that's essentially the balance before the

10:06AM 20 loan proceeds come in, the loan proceeds come in, and then your

10:06AM 21 new balance in that bank account is 2.1 million roughly.

10:07AM 22 Q Okay. If we zoom out, that highlighted box with

10:07AM 23 1.9 million, that's the loan proceeds, right?

10:07AM 24 A Right.

10:07AM 25 Q That's the refi on -- the refinance on the 6 Lumahai home?

10:07AM 1 A Yes.

10:07AM 2 Q And so this column on the far right, is this just a  
10:07AM 3 running tally of how the pre- -- the money that was in the  
10:07AM 4 account before the loan hit the account, did you just kind of  
10:07AM 5 keep an eye on that to assume that that money would be used  
10:07AM 6 first?

10:07AM 7 A Yeah, so those right two columns are -- yeah, basically  
10:07AM 8 the beginning funds in that account, and then you'll see the  
10:07AM 9 loan funds. And so as you work down the page, the transactions  
10:07AM 10 happen, the money that was in the account, I subtracted it  
10:07AM 11 first, and, you know, after you hit, let's say, 231,000 and  
10:08AM 12 expenditures, you get into the loan money.

10:08AM 13 So, yeah, the two right columns just track that, you  
10:08AM 14 know, is it the beginning money or is it the money that came in  
10:08AM 15 with the loan proceeds.

10:08AM 16 Q And so this is a way for you to keep track of whether  
10:08AM 17 those four checks going to Kaulana Freitas were actually coming  
10:08AM 18 from the loan proceeds?

10:08AM 19 A Yes.

10:08AM 20 Q If we go to the second page. You highlighted some of the  
10:08AM 21 cells. Is that where -- does that signify where the  
10:08AM 22 preexisting money was used up, and then now you're switching  
10:08AM 23 over to the loan proceeds that are being used?

10:08AM 24 A That's correct, yes. And that's shown in the two -- in  
10:08AM 25 the two right-hand columns as well.

10:08AM 1 MR. AKINA: If we go to page 8. And focusing on these  
10:08AM 2 top six withdrawals going down to -- from May 16, 2018, just  
10:09AM 3 going the first four, five columns -- first five columns. Just  
10:09AM 4 the first five columns.

10:09AM 5 BY MR. AKINA:

10:09AM 6 Q So May 16, 2018, there are a number of checks going out,  
10:09AM 7 and here we see four check numbers; is that correct?

10:09AM 8 A Yes.

10:09AM 9 Q And the amounts for those four check numbers, 20,000,  
10:09AM 10 50,000, 50,000, and 20,000; is that correct?

10:09AM 11 A Yes.

10:09AM 12 Q That's -- is that the \$140,000 worth of checks going out  
10:09AM 13 to Kaulana Freitas?

10:09AM 14 A Right.

10:09AM 15 MR. AKINA: And if we zoom out of here, and zoom to  
10:10AM 16 the next five columns for that same period, to the right.

10:10AM 17 BY MR. AKINA:

10:10AM 18 Q And here it shows that they were checks made out for  
10:10AM 19 Kaulana Freitas?

10:10AM 20 A Correct.

10:10AM 21 MR. AKINA: If we could show the witness Exhibit 11-28  
10:10AM 22 from the 47th list.

10:10AM 23 THE COURT: Go ahead.

10:10AM 24 MR. AKINA: And if we just scroll through.

10:10AM 25 BY MR. AKINA:

10:10AM 1 Q And as we're scrolling through, can you tell us what these  
10:10AM 2 are?  
10:10AM 3 A Yes, so these are -- once the checks were deposited, this  
10:10AM 4 is what this is. So some of the copies of the checks after  
10:11AM 5 they had been transacted, and then some related financial  
10:11AM 6 information.  
10:11AM 7 Q And so are these copies of those cashier's checks?  
10:11AM 8 A Yes.  
10:11AM 9 Q And going back to the first page, is that a deposit slip  
10:11AM 10 for those four checks combined to that law office of James  
10:11AM 11 Dandar?  
10:11AM 12 A Yes.  
10:11AM 13 MR. AKINA: I'd offer Exhibit 11-28 into evidence.  
10:11AM 14 There's a certification at 11-26.  
10:11AM 15 THE COURT: Any objection?  
10:11AM 16 MR. KENNEDY: No objection.  
10:11AM 17 THE COURT: 11-28 is admitted. You may publish.  
10:11AM 18 (Exhibit 11-28 was received in evidence.)  
10:11AM 19 Q And if we go to the third page, this is one of those  
10:11AM 20 checks that we were just looking at?  
10:11AM 21 A It is.  
10:11AM 22 Q \$20,000 to Kaulana Freitas on May 18, 2018?  
10:11AM 23 A Right.  
10:11AM 24 Q And it's -- going down to the fourth page, is this the  
10:11AM 25 back of that check?

10:11AM 1 A It is.  
10:11AM 2 Q And it was deposited at Hawaii National Bank?  
10:12AM 3 A Yep.  
10:12AM 4 MR. AKINA: And then if we could zoom in down here,  
10:12AM 5 the sequence number.  
10:12AM 6 BY MR. AKINA:  
10:12AM 7 Q Do the back of each of the checks in this document have a  
10:12AM 8 sequence number?  
10:12AM 9 A They do.  
10:12AM 10 Q And are they sequential, meaning one after another after  
10:12AM 11 another?  
10:12AM 12 A Yes.  
10:12AM 13 Q And with the deposit slip --  
10:12AM 14 MR. AKINA: We can zoom out of that, and going back to  
10:12AM 15 the first page. And now the second page.  
10:12AM 16 BY MR. AKINA:  
10:12AM 17 Q Is the second page the back of that deposit slip?  
10:12AM 18 A It is.  
10:12AM 19 Q And that's for the four checks?  
10:12AM 20 A Yes.  
10:12AM 21 Q And this sequence number also at Hawaii National Bank, is  
10:12AM 22 that the beginning of that series of numbers?  
10:12AM 23 A It is.  
10:12AM 24 Q All done on the same day?  
10:12AM 25 A Yes.

10:12AM 1 Q So what does that mean?

10:12AM 2 A Basically that the deposit slip was transacted at the same

10:12AM 3 time as the -- as the checks. Same transaction.

10:13AM 4 MR. AKINA: We can take this down.

10:13AM 5 If we could go back to Exhibit 11-34 already in

10:13AM 6 evidence.

10:13AM 7 THE COURT: Go ahead.

10:13AM 8 BY MR. AKINA:

10:13AM 9 Q Okay. So did you do -- so that was Kaulana Freitas on the

10:13AM 10 top row, and then Delia Fabro-Miske, is she in that middle row

10:13AM 11 for \$250,000?

10:13AM 12 A Yes.

10:13AM 13 Q And similarly, were you able to look at documents that

10:13AM 14 sort of showed the flow of funds for this one?

10:13AM 15 A I was.

10:13AM 16 Q And the difference is this one didn't go back to the

10:13AM 17 Lumahai refinance, right?

10:13AM 18 A Yeah, that's correct.

10:14AM 19 Q It came out of Michael Miske's personal account?

10:14AM 20 A Yes.

10:14AM 21 Q And so can you walk the jury through just the path that it

10:14AM 22 took.

10:14AM 23 A Yes. So, yeah, looking at that kind of second horizontal

10:14AM 24 row, you have money in Mr. Miske's personal account, \$200,000,

10:14AM 25 it goes to an account at Bank of Hawaii in the name of Delia

10:14AM 1 Fabro-Miske and her minor child.

10:14AM 2 That account gets closed and moved over to Hawaiian

10:14AM 3 Financial Federal Credit Union. And so you have \$200,000 for

10:14AM 4 Michael Miske that goes into the first Delia account. The

10:14AM 5 entire balance in that account moves over to Hawaiian Financial

10:14AM 6 Federal Credit Union. So, you know, 200 of the \$268,000 total

10:14AM 7 was attributable to Mr. Miske.

10:14AM 8 And then in that last account, the Hawaiian Financial

10:15AM 9 account, \$200,000 from Mr. Miske is added to \$50,000 that is

10:15AM 10 otherwise in that account to go to the escrow account to buy

10:15AM 11 the house.

10:15AM 12 Q And I'm not going to walk you through the underlying

10:15AM 13 documents, but this chart you put the yellow box on the top

10:15AM 14 left, the 6 Lumahai refinance, right?

10:15AM 15 A Right.

10:15AM 16 Q And does this chart show just how money flowed from that

10:15AM 17 refinance to the purchase of Kumukahi Place?

10:15AM 18 A Yes.

10:15AM 19 MR. AKINA: We can take this exhibit down.

10:15AM 20 BY MR. AKINA:

10:15AM 21 Q I'm going to ask you about the Painkiller. Are you

10:15AM 22 familiar with generally what that is?

10:15AM 23 A Yes.

10:15AM 24 Q What was that?

10:15AM 25 A That's a Boston Whaler 370 Outrage pleasure craft. Yeah,

10:15AM 1 the boat name is Painkiller.

10:15AM 2 Q And how did this relate to Miske's businesses?

10:16AM 3 A The boat was purchased in the summer of 2016, and the

10:16AM 4 funds for that came from two different loans that were taken

10:16AM 5 out on behalf of one of Mr. Miske's companies, Kama'aina

10:16AM 6 Holdings.

10:16AM 7 MR. AKINA: So if we can show the witness

10:16AM 8 Exhibit 9128-002 from the defense original list.

10:16AM 9 THE COURT: Go ahead.

10:16AM 10 MR. AKINA: And permission to publish?

10:16AM 11 THE COURT: Yes.

10:16AM 12 BY MR. AKINA:

10:16AM 13 Q You see this, this is a bill of sale for the Painkiller?

10:16AM 14 A Yes.

10:17AM 15 MR. AKINA: And if we zoom in on the top quarter of

10:17AM 16 the document.

10:17AM 17 BY MR. AKINA:

10:17AM 18 Q Sold for \$425,000?

10:17AM 19 A Correct.

10:17AM 20 MR. AKINA: If we zoom out of this and zoom in on the

10:17AM 21 portion right underneath that.

10:17AM 22 BY MR. AKINA:

10:17AM 23 Q The buyer was Hawai'i Partners LLC, right?

10:17AM 24 A Yes. That was taken out in the name of Kama'aina

10:17AM 25 Holdings, but the boat was registered in the name of Hawai'i

10:17AM 1 Partners.

10:17AM 2 MR. AKINA: And if we could zoom in on the bottom

10:17AM 3 portion of this page where it starts "The undersigned buyer

10:17AM 4 accepts."

10:17AM 5 BY MR. AKINA:

10:17AM 6 Q You see that it's signed on behalf of Hawai'i Partners

10:17AM 7 LLC?

10:17AM 8 A Yes.

10:17AM 9 MR. AKINA: If we could show the witness 11-51 from

10:17AM 10 the 47th supplement.

10:17AM 11 BY MR. AKINA:

10:18AM 12 Q Is this a check for that payment \$425,000?

10:18AM 13 A It is.

10:18AM 14 MR. AKINA: I would offer 11-51 into evidence.

10:18AM 15 There's a certification at 11-35.

10:18AM 16 THE COURT: Any objection to 11-51?

10:18AM 17 MR. KENNEDY: No objection.

10:18AM 18 THE COURT: Without objection, that exhibit is

10:18AM 19 admitted. You may publish.

10:18AM 20 (Exhibit 11-51 was received in evidence.)

10:18AM 21 MR. AKINA: And focusing on the top the face of the

10:18AM 22 check.

10:18AM 23 BY MR. AKINA:

10:18AM 24 Q Who is this check being -- who's making this check out?

10:18AM 25 A So it's a, yeah, Central Pacific Bank -- official bank

10:18AM 1 check.

10:18AM 2 Q And who -- which account is it coming from?

10:18AM 3 A It is -- the source of funds comes from, yeah, Kama'aina

10:19AM 4 Holdings.

10:19AM 5 Q So this is what you were saying earlier was paid for

10:19AM 6 through Kama'aina Holdings but registered under Hawai'i

10:19AM 7 Partners?

10:19AM 8 A Yeah, correct.

10:19AM 9 MR. AKINA: We can take this down.

10:19AM 10 BY MR. AKINA:

10:19AM 11 Q You mentioned that this was paid for using two credit

10:19AM 12 applications. Were those business loans?

10:19AM 13 A Yes.

10:19AM 14 Q And did you chart out the path from those loans to this

10:19AM 15 check that we're looking at?

10:19AM 16 A I did.

10:19AM 17 MR. AKINA: Could we show the witness 11-54 from the

10:19AM 18 47th supplement?

10:19AM 19 THE COURT: Yes.

10:19AM 20 BY MR. AKINA:

10:19AM 21 Q Is this that chart just showing -- showing where the money

10:19AM 22 came from?

10:19AM 23 A It is.

10:19AM 24 MR. AKINA: I'd offer 11-54 into evidence.

10:19AM 25 THE COURT: Any objection?

10:19AM 1 MR. KENNEDY: No objection.

10:19AM 2 THE COURT: 11-54 is admitted. You may publish.

10:20AM 3 (Exhibit 11-54 was received in evidence.)

10:20AM 4 Q Okay. There are two yellow boxes. What do those

10:20AM 5 represent?

10:20AM 6 A Those represent the two loans that were taken out.

10:20AM 7 Q And money from those two loans, they ended up in this blue

10:20AM 8 box in the middle, Michael Miske's personal account?

10:20AM 9 A That's correct.

10:20AM 10 Q And then out of that account, is that where that check

10:20AM 11 that we just looked at came from?

10:20AM 12 A Yes. One of the loans went through the Kama'aina Holdings

10:20AM 13 business account, and then the other loan was deposited

10:20AM 14 directly into Mr. Miske's account, and then, yeah, correct, the

10:20AM 15 \$425,000 check came out of the personal account.

10:20AM 16 Q Okay. So I'm going to ask you questions about this first

10:20AM 17 one on the left, that first yellow box, the loan ending in 957.

10:20AM 18 MR. AKINA: If I can show you Exhibit 11-36 from the

10:20AM 19 47th supplement.

10:20AM 20 THE COURT: Go ahead.

10:20AM 21 BY MR. AKINA:

10:20AM 22 Q Is this the credit application for that loan ending in 957

10:21AM 23 that we were talking about?

10:21AM 24 A Yes.

10:21AM 25 MR. AKINA: I'd offer Exhibit 11-36 into evidence.

10:21AM 1 There's a certification at 11-35.

10:21AM 2 THE COURT: Any objection?

10:21AM 3 MR. KENNEDY: I'm just going to review it briefly,

10:21AM 4 Your Honor.

10:21AM 5 THE COURT: Yes, go ahead.

10:21AM 6 MR. KENNEDY: No objection.

10:21AM 7 THE COURT: 11-36 is admitted. You may publish it.

10:21AM 8 (Exhibit 11-36 was received in evidence.)

10:21AM 9 BY MR. AKINA:

10:21AM 10 Q So what was the amounts of the two credit applications

10:21AM 11 that went -- that were the source of the funds for the

10:21AM 12 Painkiller?

10:21AM 13 A So both of them were \$250,000.

10:21AM 14 Q So if we focus on this top box under "Credit Request

10:22AM 15 Information," is that amount reflected here, \$250,000?

10:22AM 16 A It is.

10:22AM 17 Q And under "Use of Funds," there had to be something

10:22AM 18 checked. What was checked for the use of funds?

10:22AM 19 A "Purchase equipment."

10:22AM 20 Q And do you see here this notice, can you read that out,

10:22AM 21 please?

10:22AM 22 A Yes. "This credit application is for business purposes

10:22AM 23 only. Credit for personal, family, and/or household purposes

10:22AM 24 is prohibited under business credit lines/loans."

10:22AM 25 Q Is that pretty typical for a business loan, it's got to be

10:22AM 1 for a business purpose?

10:22AM 2 A Yes.

10:22AM 3 MR. AKINA: And if we go -- zoom out of here and focus

10:22AM 4 towards the middle under the "Applicant Information."

10:22AM 5 BY MR. AKINA:

10:23AM 6 Q Okay. Who is the applicant here?

10:23AM 7 A Kama'aina Holdings.

10:23AM 8 Q And then there's an email address. Whose email address is

10:23AM 9 that?

10:23AM 10 A Yeah, mike@kama'aina.com.

10:23AM 11 MR. AKINA: If we go to page 3 of the document,

10:23AM 12 focusing on this middle box on left.

10:23AM 13 BY MR. AKINA:

10:23AM 14 Q Who is the guarantor?

10:23AM 15 A Michael Miske, Jr.

10:23AM 16 Q And if we focus on the box to the right -- on the right

10:23AM 17 side of the page of that, is there another guarantor listed for

10:23AM 18 Kama'aina Termite and Pest Control?

10:23AM 19 A Yes.

10:23AM 20 MR. AKINA: If we go to page 4 of the document. If we

10:23AM 21 can focus on that first signature in the middle and the name

10:23AM 22 next to it.

10:23AM 23 BY MR. AKINA:

10:24AM 24 Q Is this signed by Michael Miske?

10:24AM 25 A Yes.

10:24AM 1 MR. AKINA: And there's a bunch of language above  
10:24AM 2 that. I want to focus on the first paragraph towards the third  
10:24AM 3 to the last line where it starts with number 5.  
10:24AM 4 BY MR. AKINA:  
10:24AM 5 Q It's a little hard to make out, but number 5, is that  
10:24AM 6 essentially the same language from that notice on the first  
10:24AM 7 page?  
10:24AM 8 A It is.  
10:24AM 9 Q About this has to be for business purposes and not for  
10:24AM 10 personal, family or household purposes?  
10:24AM 11 A Yes.  
10:24AM 12 Q And I'm going to show you -- ask you about the second  
10:24AM 13 loan.  
10:24AM 14 MR. AKINA: If we could show the witness Exhibit 11-41  
10:24AM 15 from the 47th list.  
10:24AM 16 THE COURT: Yes, go ahead.  
10:24AM 17 BY MR. AKINA:  
10:24AM 18 Q This is that second loan ending 956, the application for  
10:25AM 19 it?  
10:25AM 20 A Yes.  
10:25AM 21 Q Also for \$250,000?  
10:25AM 22 A Right.  
10:25AM 23 MR. AKINA: And I would offer 11-41 into evidence.  
10:25AM 24 There's a certification at 11-35.  
10:25AM 25 THE COURT: Any objection?

10:25AM 1 MR. KENNEDY: Just give me a moment to review it, Your  
10:25AM 2 Honor.  
10:25AM 3 THE COURT: Of course.  
10:25AM 4 MR. KENNEDY: No objection.  
10:25AM 5 THE COURT: 11-41 is admitted you. You may publish  
10:25AM 6 it.  
10:25AM 7 (Exhibit 11-41 was received in evidence.)  
10:25AM 8 BY MR. AKINA:  
10:25AM 9 Q Are a lot of the terms in this application similar to the  
10:25AM 10 terms in the first application we looked at?  
10:25AM 11 A Similar, yeah. The amount is the same, \$250,000. This is  
10:25AM 12 a line of credit and not a term loan, but yes.  
10:25AM 13 Q And so focusing on the top box again. Same amount,  
10:25AM 14 \$250,000, right?  
10:25AM 15 A Right.  
10:25AM 16 Q And like you said, line of credit. This time what option  
10:26AM 17 was checked for the use of the funds?  
10:26AM 18 A "Other business purpose and working capital" was typed in.  
10:26AM 19 Q And then is that same notice about person -- about  
10:26AM 20 business purposes only here?  
10:26AM 21 A Yes.  
10:26AM 22 MR. AKINA: And zooming out of this, focusing on the  
10:26AM 23 applicant information.  
10:26AM 24 BY MR. AKINA:  
10:26AM 25 Q Is that the same applicant information as the other one?

10:26AM 1 A It is, yeah. Kama'aina Holdings with an associated email  
10:26AM 2 address of mike@kama'aina.com.  
10:26AM 3 Q And if we go to page 3, is Michael Miske and Kama'aina  
10:26AM 4 Termite and Pest Control also the guarantor on this loan?  
10:26AM 5 A Yes.  
10:26AM 6 Q And if we go to page 4, is this also signed by Michael  
10:26AM 7 Miske?  
10:26AM 8 A Yes.  
10:26AM 9 Q And if we focus on that first paragraph above it, does it  
10:27AM 10 have that similar language about business purposes only?  
10:27AM 11 A Yes, it does.  
10:27AM 12 Q And on the far right, the date for the signature, this is  
10:27AM 13 May 2016; is that right?  
10:27AM 14 A Right.  
10:27AM 15 Q Is that the same date as the other loan?  
10:27AM 16 A Yes.  
10:27AM 17 MR. AKINA: If we could show the witness Exhibit 11-53  
10:27AM 18 from the 47th list.  
10:27AM 19 THE COURT: Yes.  
10:27AM 20 BY MR. AKINA:  
10:27AM 21 Q Are these text messages between Trisha Castro and Michael  
10:27AM 22 Miske?  
10:27AM 23 A They are.  
10:27AM 24 MR. AKINA: I'd offer Exhibit 11-53 into evidence.  
10:27AM 25 There is a certification at 9-1313 from the government's 29th

10:27AM 1 list.

10:27AM 2 THE COURT: Any objection?

10:27AM 3 MR. KENNEDY: Just a moment to review them, Your

10:27AM 4 Honor.

10:28AM 5 No objection.

10:28AM 6 THE COURT: 11-53 is admitted. You may publish.

10:28AM 7 (Exhibit 11-53 was received in evidence.)

10:28AM 8 MR. AKINA: Focusing towards the middle of the page,

10:28AM 9 starting 2016, October 5th, at 23:26. So lower than where the

10:29AM 10 mouse is right now. Okay. Right there. And go down -- yeah,

10:29AM 11 that's good.

10:29AM 12 BY MR. AKINA:

10:29AM 13 Q Okay. You see this text from Trisha Castro on

10:29AM 14 October 5th, 2016: "Do you own Painkiller personally or

10:29AM 15 Holdings?"

10:29AM 16 A Yes.

10:29AM 17 Q And Holdings would be Kama'aina Holdings?

10:29AM 18 A I assume so, yeah.

10:29AM 19 MR. AKINA: And if we zoom out of here. If we could

10:29AM 20 focus on the next couple of lines of text starting at 23:26

10:29AM 21 hours. And further down.

10:29AM 22 BY MR. AKINA:

10:29AM 23 Q Right here, what is the response?

10:29AM 24 A Personally.

10:29AM 25 MR. AKINA: We can zoom out.

10:29AM 1 BY MR. AKINA:

10:29AM 2 Q Is that consistent with what was on the loan applications?

10:30AM 3 A No.

10:30AM 4 MR. AKINA: Okay. We can take this down.

10:30AM 5 BY MR. AKINA:

10:30AM 6 Q I'm going to ask you about another boat, the Rachel. Is

10:30AM 7 that a fishing vessel?

10:30AM 8 A It is.

10:30AM 9 Q And was that vessel also sold pursuant -- was that sold?

10:30AM 10 A Yes, the vessel was sold.

10:30AM 11 Q And was that for approximately \$676,000 -- \$676,785.56 --

10:30AM 12 THE COURT REPORTER: Could you say that again?

10:30AM 13 BY MR. AKINA:

10:30AM 14 Q \$676,785.56.

10:30AM 15 A Yes.

10:30AM 16 Q Was there anything accompanying the -- the Rachel as well?

10:30AM 17 A Yes. So there's a fishing permit that's associated with

10:30AM 18 the vessel or that was at the time.

10:30AM 19 Q Is that a longline limited entry permit?

10:31AM 20 A Yes.

10:31AM 21 Q And generally, what does that let you do?

10:31AM 22 A It allows for, you know, fishing certain species in

10:31AM 23 certain areas, and then this permit specifically allowed for

10:31AM 24 tuna fishing in parts of the Pacific.

10:31AM 25 Q And is that required to fish around Hawaii?

10:31AM 1 A It's required to at least do, yeah, certain fishing  
10:31AM 2 activities. Not exactly sure what.  
10:31AM 3 Q Not all fishing activities but certain fishing activities.  
10:31AM 4 A Right.  
10:31AM 5 MR. AKINA: If we could show the witness Exhibit 11-55  
10:31AM 6 from the 47th supplemental.  
10:31AM 7 THE COURT: Yes.  
10:31AM 8 BY MR. AKINA:  
10:31AM 9 Q Is this a buy-sell agreement for the Rachel and that entry  
10:31AM 10 permit?  
10:31AM 11 A It is.  
10:31AM 12 Q And if we go to the last page, page 3, is it signed by  
10:31AM 13 Michael Miske?  
10:31AM 14 A It is.  
10:31AM 15 MR. AKINA: And I'd offer Exhibit 11-55 into evidence.  
10:32AM 16 There is a certification at 1-1050 from the original list.  
10:32AM 17 THE COURT: Any objection?  
10:32AM 18 MR. KENNEDY: No objection.  
10:32AM 19 THE COURT: 11-55 then is admitted. You may publish  
10:32AM 20 it.  
10:32AM 21 (Exhibit 11-55 was received in evidence.)  
10:32AM 22 MR. AKINA: If we can focus here on the two  
10:32AM 23 signatures. This is the last page.  
10:32AM 24 BY MR. AKINA:  
10:32AM 25 Q Is the bottom, that's Mike Miske?

10:32AM 1 A Correct.

10:32AM 2 Q On behalf of Kama'aina Holdings?

10:32AM 3 A Yes.

10:32AM 4 Q And the date here for the top signature is December 2nd,

10:32AM 5 2010?

10:32AM 6 A That's correct.

10:32AM 7 MR. AKINA: If we could go to the first page, and

10:32AM 8 focusing on the top portion, including the first three

10:32AM 9 paragraphs.

10:32AM 10 BY MR. AKINA:

10:32AM 11 Q Who is this agreement between? Who are the parties?

10:32AM 12 A So the agreement is between Kama'aina Holdings, who is

10:33AM 13 buying the Rachel and the fishing permit, and Pelagic Fisheries

10:33AM 14 is the seller through an escrow agent that was associated with

10:33AM 15 this. But, yeah, that's the buyer and seller, and the -- yes.

10:33AM 16 Q And there are two dollar amounts listed here. Can you

10:33AM 17 explain what those are for?

10:33AM 18 A Correct. Yeah, so the total purchase price was \$900,000,

10:33AM 19 and in this paragraph they just kind of break out, you know, at

10:33AM 20 least on paper, how much is attributable to the boat versus how

10:33AM 21 much is attributable to the fishing license.

10:33AM 22 Q And was it 800,000 for the boat and 100,000 for the

10:33AM 23 Hawaiian limited entry longline permit?

10:33AM 24 A Yes.

10:33AM 25 MR. AKINA: If we can show the witness Exhibit 11-56

10:33AM 1 from the 47th supplement.

10:33AM 2 THE COURT: Go ahead.

10:33AM 3 BY MR. AKINA:

10:33AM 4 Q And what is this?

10:34AM 5 A This is the bill of sale documenting the transaction.

10:34AM 6 Q Between those two parties again?

10:34AM 7 A Yeah, between Pelagic Fisheries as the seller and

10:34AM 8 Kama'aina Holdings as the buyer.

10:34AM 9 MR. AKINA: I'd offer Exhibit 11-56 into evidence.

10:34AM 10 THE COURT: Any objection to that?

10:34AM 11 MR. KENNEDY: No objection.

10:34AM 12 THE COURT: 11-56 is admitted without objection. You

10:34AM 13 may publish it.

10:34AM 14 (Exhibit 11-56 was received in evidence.)

10:34AM 15 MR. AKINA: And focusing on top portions, one -- boxes

10:34AM 16 1, 2, 3 and 4.

10:34AM 17 BY MR. AKINA:

10:34AM 18 Q This lists the parties from that previous buy-sell

10:34AM 19 agreement?

10:34AM 20 A That's correct.

10:34AM 21 MR. AKINA: We can take this down.

10:34AM 22 BY MR. AKINA:

10:34AM 23 Q Okay. And how was the -- where did the money come from

10:34AM 24 for the Rachel?

10:34AM 25 A The operations, you have Kama'aina Termite and Pest

10:35AM 1 Control.

10:35AM 2 Q And were you able to trace that to a specific type of job

10:35AM 3 at Kama'aina Termite and Pest Control?

10:35AM 4 A Yes.

10:35AM 5 Q Which job?

10:35AM 6 A It was the job at the Keola La'i building.

10:35AM 7 Q And were you able to chart out that path of funds?

10:35AM 8 A I was.

10:35AM 9 MR. AKINA: Could we show the witness Exhibit 11-59

10:35AM 10 from the 47th list?

10:35AM 11 THE COURT: Yes.

10:35AM 12 BY MR. AKINA:

10:35AM 13 Q Is this that path of funds that you charted out?

10:35AM 14 A It is.

10:35AM 15 MR. AKINA: I'd offer 11-59 into evidence.

10:35AM 16 THE COURT: Any objection?

10:35AM 17 MR. KENNEDY: No objection.

10:35AM 18 THE COURT: 11-59 is admitted. You may publish.

10:35AM 19 (Exhibit 11-59 was received in evidence.)

10:35AM 20 Q Can you walk the jury through the path of funds for the

10:35AM 21 Rachel and the longline permit?

10:35AM 22 A Yes. So starting at the top left, that's income from the

10:35AM 23 Keola La'i building job, which -- and Nordic PCL was the

10:36AM 24 company. So Nordic PCL for the Keola La'i job wrote two

10:36AM 25 checks. The checks went into the Kama'aina Termite business

10:36AM 1 account, and then \$950,000 of that money went to Kama'aina  
10:36AM 2 Holdings, and then approximately \$900,000 of that money went to  
10:36AM 3 buy the -- the Rachel and the permit.  
10:36AM 4 Q So the Rachel and the permit were obtained using proceeds  
10:36AM 5 from -- using Kama'aina Termite and Pest Control proceeds  
10:36AM 6 specifically from that Keola La'i job?  
10:36AM 7 A That's correct.  
10:36AM 8 Q Was any money from -- was there money spent also to  
10:36AM 9 maintain the Rachel?  
10:36AM 10 A Yes.  
10:36AM 11 Q And where did that come from?  
10:37AM 12 A So in 2018, there was a good bit of refurbishment, repair,  
10:37AM 13 etcetera, work done. And the money that was -- part of the  
10:37AM 14 money that was used to do that work came from the refinance  
10:37AM 15 from the Bank of Hawaii loan from the 6 Lumahai property.  
10:37AM 16 Q That's the same refinance you were talking about earlier?  
10:37AM 17 A That's correct.  
10:37AM 18 Q And were you able to chart out the path for the funds for  
10:37AM 19 that as well?  
10:37AM 20 A Yes.  
10:37AM 21 MR. AKINA: And could we show the witness  
10:37AM 22 Exhibit 11-60?  
10:37AM 23 THE COURT: Yes, go ahead.  
10:37AM 24 BY MR. AKINA:  
10:37AM 25 Q And is this that path of funds that you charted out?

10:37AM 1 A It is.

10:37AM 2 MR. AKINA: I'd offer Exhibit 11-60 into evidence.

10:37AM 3 THE COURT: Any objection?

10:37AM 4 MR. KENNEDY: No objection.

10:37AM 5 THE COURT: 11-60 is admitted. You may publish.

10:37AM 6 (Exhibit 11-60 was received in evidence.)

10:38AM 7 BY MR. AKINA:

10:38AM 8 Q So based on the documents you reviewed, did money come

10:38AM 9 from that refinance? I think earlier you testified that that

10:38AM 10 whole 1.9 million went into Michael Miske's personal accounts?

10:38AM 11 A That's correct.

10:38AM 12 Q And then there's a \$25,000 payment that goes out in May of

10:38AM 13 2018?

10:38AM 14 A Yes, there's a \$25,000 transfer to Kama'aina Holdings, and

10:38AM 15 then that \$25,000 was used in various ways for maintenance on

10:38AM 16 the Rachel.

10:38AM 17 Q And there's some language in quotes here, "Shipyard

10:38AM 18 payment, dry dock 2018." Did that come from the documents you

10:38AM 19 were reviewing?

10:38AM 20 A Yes.

10:38AM 21 Q So that was -- what was that?

10:38AM 22 A That would have been a notation on the documents that we

10:38AM 23 got from the bank.

10:38AM 24 Q I'm going to ask you --

10:39AM 25 MR. AKINA: If we can show and publish Exhibit 11-19,

10:39AM 1 which is already in evidence.

10:39AM 2 THE COURT: Yes, go ahead.

10:39AM 3 BY MR. AKINA:

10:39AM 4 Q This is the summary chart that you created of Michael  
10:39AM 5 Miske's personal accounts showing when that refinance loan hit  
10:39AM 6 the account?

10:39AM 7 A Yeah, correct.

10:39AM 8 MR. AKINA: And if we go to page 9 of the document.

10:39AM 9 And focusing on May 25th, 2018. There is a check -- let's do  
10:39AM 10 the first left half of the page first.

10:39AM 11 BY MR. AKINA:

10:39AM 12 Q This one, May 25th, 2018, Check Number 296 for \$25,000, is  
10:40AM 13 that what was depicted in that chart?

10:40AM 14 A Yes. The bottom line, yeah.

10:40AM 15 Q And if we focus on the rest of the row to the right of it,  
10:40AM 16 it was made out to Kama'aina Holdings with the notation for  
10:40AM 17 "Shipyard payment, dry dock"?

10:40AM 18 A That's correct.

10:40AM 19 MR. AKINA: We can take this down.

10:40AM 20 BY MR. AKINA:

10:40AM 21 Q Was there a Ferrari that was seized from 6 Lumahai?

10:40AM 22 A There was.

10:40AM 23 Q Specifically a Ferrari Berlinetta?

10:40AM 24 A Yes.

10:40AM 25 MR. AKINA: Could we show and publish Exhibit 9-1194,

10:40AM 1 from the third supplement already in evidence?

10:41AM 2 THE COURT: I don't have it.

10:41AM 3 MR. AKINA: 9-1194 from the third supplement?

10:41AM 4 THE COURT: Yes. Okay, go ahead.

10:41AM 5 BY MR. AKINA:

10:41AM 6 Q This is a picture of that Ferrari?

10:41AM 7 A It is.

10:41AM 8 MR. AKINA: And if we can now publish Exhibit 9-1197

10:41AM 9 from the third supplement.

10:42AM 10 And going to page 5 of the document.

10:42AM 11 BY MR. AKINA:

10:42AM 12 Q Do you see, if we focus on top left corner, the buyer in

10:42AM 13 the name of Hawai'i Partners; is that correct?

10:42AM 14 A That's correct, yes.

10:42AM 15 MR. AKINA: And zooming out of this, right below that

10:42AM 16 under the description of the vehicle, the year, make and model.

10:42AM 17 BY MR. AKINA:

10:42AM 18 Q What was the year, make and model?

10:42AM 19 A 2017 Ferrari F12berlinetta.

10:42AM 20 MR. AKINA: And then if we could focus on the VIN,

10:42AM 21 which is right below that to the right.

10:42AM 22 BY MR. AKINA:

10:42AM 23 Q The VIN number, is it ZFF74UFA5H0223173?

10:43AM 24 A Yes.

10:43AM 25 Q And above that there's a date of May 30th, 2020, to be

10:43AM 1 delivered; is that correct?

10:43AM 2 A Yes.

10:43AM 3 Q And below that, what was the purchase price?

10:43AM 4 A Yeah, a little over two -- well, almost 218. \$217,866.52.

10:43AM 5 Q And how was this Ferrari paid for?

10:43AM 6 A It came -- yeah, the source of the money was Kama'aina

10:43AM 7 Termite bank account.

10:43AM 8 Q And were you able to trace that to a specific job?

10:43AM 9 A Yes.

10:43AM 10 Q Which job?

10:43AM 11 A It was a job on the Big Island related to the Maunakea --

10:43AM 12 Maunakea LLC.

10:43AM 13 MR. AKINA: If we could show the witness Exhibit 11-67

10:44AM 14 from the 47th supplemental.

10:44AM 15 THE COURT: Go ahead.

10:44AM 16 BY MR. AKINA:

10:44AM 17 Q What are we looking at here?

10:44AM 18 A Yeah, so a portion of the previous -- previous exhibit

10:44AM 19 related to, you know, bank accounts, and so this is a portion

10:44AM 20 of the Kama'aina Termite and Pest Control bank account for

10:44AM 21 April, May and June of 2020.

10:44AM 22 Q So did you put it into a -- an Excel spreadsheet showing

10:44AM 23 all the activity in that period after April 2020?

10:44AM 24 A Yes.

10:44AM 25 Q And does that cover payments from the Maunakea job?

10:44AM 1 A Yes.

10:44AM 2 Q And does it cover a payment for the Ferrari?

10:44AM 3 A Yes.

10:45AM 4 MR. AKINA: I would offer Exhibit 11-67 into evidence.

10:45AM 5 THE COURT: Any objection?

10:45AM 6 MR. KENNEDY: No objection.

10:45AM 7 THE COURT: 11-67 is admitted. You may publish.

10:45AM 8 (Exhibit 11-67 was received in evidence.)

10:45AM 9 MR. AKINA: And if we could focus on the top left-hand

10:45AM 10 corner between the gray boxes.

10:45AM 11 BY MR. AKINA:

10:45AM 12 Q This is a summary of account activity for Kama'aina

10:45AM 13 Termite and Pest Control?

10:45AM 14 A Yes, one of the Kama'aina Termite and Pest Control

10:45AM 15 accounts. This is the business savings account.

10:45AM 16 MR. AKINA: And if we zoom out of here. Focusing on

10:45AM 17 the balance in the middle of the page from the top line. And

10:45AM 18 the -- yeah.

10:45AM 19 BY MR. AKINA:

10:45AM 20 Q Okay. So the top line where this starts is April 2020.

10:46AM 21 What does this represent, this starting balance?

10:46AM 22 A So, yeah, this is the balance that's in the account as of

10:46AM 23 April 1st before any of the money from the Maunakea job gets

10:46AM 24 transferred into the -- into the account.

10:46AM 25 Q So there's approximately \$151,000 prior to the Maunakea

10:46AM 1 job payments.

10:46AM 2 A Correct.

10:46AM 3 MR. AKINA: If we could zoom out of that. If we focus  
10:46AM 4 on the next couple of payments, the Additions column all the  
10:46AM 5 way to the Source Description for the rest of April.

10:46AM 6 BY MR. AKINA:

10:46AM 7 Q Okay. And then you see three customer deposits being made  
10:46AM 8 in April of varying amounts?

10:46AM 9 A Right.

10:46AM 10 Q What are those?

10:46AM 11 A Yeah, again, those are funds from the Maunakea LLC related  
10:47AM 12 to the -- the job on Big Island. So these are payments on  
10:47AM 13 that -- for that service.

10:47AM 14 MR. AKINA: And if we zoom out.

10:47AM 15 BY MR. AKINA:

10:47AM 16 Q And then there's another deposit, May 5th, 2020. Is that  
10:47AM 17 a fourth payment for that Maunakea job as well?

10:47AM 18 A Yes.

10:47AM 19 Q Now, if we zoom out of here, going down to June 1st, 2020,  
10:47AM 20 do you see a withdrawal for \$217,000?

10:47AM 21 A Yes.

10:47AM 22 Q Where did that go to?

10:47AM 23 A So that money went into the Hawai'i Partners bank account.

10:47AM 24 Q And ultimately where did it go?

10:47AM 25 A To purchase the Ferrari.

10:47AM 1 Q And as of June 1st, 2020, was there -- was there a  
10:47AM 2 significant amount of money coming in besides the Maunakea job?  
10:48AM 3 A No.  
10:48AM 4 Q And but for that Maunakea job money, would the starting  
10:48AM 5 balance of \$151,000 have been enough to cover that \$217,000  
10:48AM 6 payment?  
10:48AM 7 A No.  
10:48AM 8 MR. AKINA: If we could show the witness  
10:48AM 9 Exhibit 11-1199 from the third supplement.  
10:48AM 10 THE COURT: Go ahead.  
10:48AM 11 BY MR. AKINA:  
10:48AM 12 Q What are we looking at here?  
10:48AM 13 A So, yeah, documentation, a check from the Bank of Hawaii  
10:48AM 14 for the payment on the -- for the Ferrari.  
10:48AM 15 MR. AKINA: I'd offer Exhibit 9-1199 into evidence.  
10:48AM 16 THE COURT: Any objection to that?  
10:48AM 17 MR. KENNEDY: No objection.  
10:48AM 18 THE COURT: 9-1199 is admitted then without objection.  
10:48AM 19 You may publish.  
10:48AM 20 (Exhibit 9-1199 was received in evidence.)  
10:49AM 21 MR. AKINA: If we can focus in on the check itself.  
10:49AM 22 BY MR. AKINA:  
10:49AM 23 Q And -- and what's the date?  
10:49AM 24 A May 30th, 2020.  
10:49AM 25 Q And I said check, but this is a receipt for that check; is

10:49AM 1 that correct?

10:49AM 2 A Yes. Yeah, it's -- yeah, a Bank of Hawaii documentation

10:49AM 3 for the -- for the payment, yeah.

10:49AM 4 Q Okay. And the purchaser is Hawai'i Partners?

10:49AM 5 A That's correct.

10:49AM 6 Q And this is paid out to Ferrari Hawaii?

10:49AM 7 A Yes.

10:49AM 8 Q Now, so based on the documents reviewed, was the Ferrari

10:49AM 9 purchased with proceeds from Kama'aina Termite and Pest

10:49AM 10 Control, specifically the Maunakea job?

10:49AM 11 A Yes.

10:49AM 12 MR. AKINA: You can take this exhibit down.

10:49AM 13 If we could go back to Exhibit 11-67.

10:49AM 14 THE COURT: Go ahead.

10:49AM 15 MR. AKINA: I want to focus on this -- on the top

10:49AM 16 portions, the April and May additions and subtractions --

10:50AM 17 sorry, from April to May 5th.

10:50AM 18 Could you do additions and subtractions?

10:50AM 19 BY MR. AKINA:

10:50AM 20 Q So these top three numbers, previously you testified that

10:50AM 21 came from the Maunakea job?

10:50AM 22 A Right.

10:50AM 23 Q And then this subsequent number, \$669,000 approximately,

10:50AM 24 that was a fourth payment from the Maunakea job?

10:50AM 25 A Right.

10:50AM 1 Q And then on May 5th, 2020, there's a subtraction of  
10:50AM 2 approximately \$1.1 million. What do the parentheses represent  
10:50AM 3 around that number?  
10:50AM 4 A Just the parentheses -- parentheses just show that it's  
10:50AM 5 negative. It's a withdrawal, a subtraction.  
10:50AM 6 Q So this is money going out of the Kama'aina Termite and  
10:51AM 7 Pest Control accounts?  
10:51AM 8 A Yes.  
10:51AM 9 Q And does this amount, specifically \$1,162,826.76, is that  
10:51AM 10 the sum of the first two payments from the Maunakea job?  
10:51AM 11 A It is.  
10:51AM 12 Q And what was -- was this a cash withdrawal or a check, or  
10:51AM 13 what was this, this \$1.1 million --  
10:51AM 14 A It was a -- yeah, it was a withdrawal, and it was -- it's  
10:51AM 15 an official bank check.  
10:51AM 16 MR. AKINA: If we could show Exhibit 11-72.  
10:51AM 17 THE COURT: Okay.  
10:51AM 18 BY MR. AKINA:  
10:51AM 19 Q Is this a copy of that cashier's check for that amount  
10:51AM 20 coming out of Kama'aina Termite and Pest Control's account?  
10:51AM 21 A Yes, it is.  
10:52AM 22 MR. AKINA: I'd offer Exhibit 11-72 into evidence.  
10:52AM 23 THE COURT: Any objection?  
10:52AM 24 MR. KENNEDY: No objection.  
10:52AM 25 THE COURT: 11-72 is admitted. You may publish.

10:52AM 1 (Exhibit 11-72 was received in evidence.)  
10:52AM 2 MR. AKINA: If we could focus on the cashier's check.  
10:52AM 3 BY MR. AKINA:  
10:52AM 4 Q So you see that this -- so this corresponds to that line  
10:52AM 5 item on the chart that we were just looking at?  
10:52AM 6 A It does.  
10:52AM 7 Q And the date is May 5th, 2020, on this cashier's check?  
10:52AM 8 A Right.  
10:52AM 9 Q And who is it made out to?  
10:52AM 10 A Kama'aina Termite and Pest Control.  
10:52AM 11 Q Do you know who drew this cashier's check out of the  
10:52AM 12 account?  
10:52AM 13 A Yeah, based on the -- the documents from the bank, yeah,  
10:52AM 14 Delia Fabro-Miske.  
10:53AM 15 MR. AKINA: And if we zoom out of here. If I could  
10:53AM 16 show the witness Exhibit 11-71 from the 47th supplement.  
10:53AM 17 THE COURT: Yes.  
10:53AM 18 MR. AKINA: If we go to the second page.  
10:53AM 19 BY MR. AKINA:  
10:53AM 20 Q And what are we looking at here?  
10:53AM 21 A Yeah, so documentation again from Bank of Hawaii related  
10:53AM 22 to that withdrawal and the corresponding cashier's check.  
10:53AM 23 MR. AKINA: If we go back to the first page.  
10:53AM 24 I offer Exhibit 11-71 into evidence. There's a  
10:53AM 25 certification at 9-1334.

10:53AM 1 THE COURT: Any objection?

10:53AM 2 MR. KENNEDY: No objection.

10:53AM 3 THE COURT: 11-71 is admitted. You may publish.

10:53AM 4 (Exhibit 11-71 was received in evidence.)

10:53AM 5 MR. AKINA: And so this is from Bank of Hawaii, and if

10:53AM 6 we could focus on the first -- the withdrawal -- the face of

10:53AM 7 that withdrawal slip. The entire -- the entire slip.

10:53AM 8 BY MR. AKINA:

10:54AM 9 Q And what does this show?

10:54AM 10 A So, yeah, this is the withdrawal slip documentation, yeah,

10:54AM 11 that would have been prepared at the time the check was issued

10:54AM 12 in May, and the signature appears to be Delia Fabro's.

10:54AM 13 Q And this is the same dollar amount?

10:54AM 14 A Yes.

10:54AM 15 Q And the same date, May 5th, 2020?

10:54AM 16 A Right.

10:54AM 17 Q So fair to say that this cashier's check in a little bit

10:54AM 18 over \$1.1 million, that's money that came from the Maunakea

10:54AM 19 job?

10:54AM 20 A Yes.

10:54AM 21 MR. AKINA: We can take this down.

10:54AM 22 BY MR. AKINA:

10:54AM 23 Q And in addition to the Ferrari, were other vehicles

10:54AM 24 seized?

10:54AM 25 A Yes.

10:54AM 1 Q And that was pursuant to court order?

10:55AM 2 A They were seized, yeah, as evidence when the search

10:55AM 3 warrant happened.

10:55AM 4 Q And what types of other vehicles were seized?

10:55AM 5 A There were four Volkswagens and a Ford Bronco.

10:55AM 6 THE COURT: Mr. Akina, if you're going to move -- if

10:55AM 7 you're in the position of moving past the Ferrari, this might

10:55AM 8 be a good time to take a break.

10:55AM 9 MR. AKINA: Sounds good, Your Honor.

10:55AM 10 THE COURT: Okay. We'll go ahead and take our break.

10:55AM 11 It's nearly 11:00.

10:55AM 12 As we go to break, I remind our jurors to please

10:55AM 13 refrain from discussing the substance of this case with anyone,

10:55AM 14 including each other until I advise you otherwise; to also

10:55AM 15 refrain from accessing any media or other accounts of this case

10:55AM 16 that may be out there; and do not conduct your own

10:55AM 17 investigation into anything relating to this case.

10:55AM 18 We'll take a short break, and a reminder that we will

10:55AM 19 be taking a full lunch break somewhere around the noon hour,

10:55AM 20 maybe a little later, given when we're breaking now.

10:55AM 21 (Proceedings were recessed at 10:55 a.m. to 11:26

11:24AM 22 a.m.)

11:26AM 23 THE COURT: All right. Mr. Akina, you may resume when

11:26AM 24 you're ready.

11:26AM 25 MR. AKINA: Could we publish Exhibit 11-28 that was

11:26AM 1 admitted earlier this morning?

11:26AM 2 THE COURT: Yes, you may.

11:26AM 3 BY MR. AKINA:

11:26AM 4 Q So going back to the Kumukahi residence, you had testified

11:26AM 5 earlier this morning that money had gone from -- from the Keola

11:26AM 6 La'i job to Michael Miske to -- sorry, to the Lumahai refinance

11:26AM 7 all the way through Mr. Miske to Kaulana Freitas; is that

11:26AM 8 correct?

11:26AM 9 A Right.

11:26AM 10 Q And then money -- those checks went from Kaulana Freitas

11:27AM 11 to an attorney, James Dandar?

11:27AM 12 A Right, yeah.

11:27AM 13 Q And did you -- are you aware of who James Dandar was in

11:27AM 14 relation to this foreclosure sale?

11:27AM 15 A Yeah, so it was purchased at foreclosure, right, and so  
11:27AM 16 the person running the foreclosure auction -- this is an escrow  
11:27AM 17 account basically. So, yeah, the law offices of James Dandar  
11:27AM 18 is essentially just an escrow or trust account to hold those  
11:27AM 19 funds while the purchase process continues.

11:27AM 20 MR. AKINA: And if we could show the witness

11:27AM 21 Exhibit 11-24 from the 47th supplement.

11:27AM 22 Just going to the second page, focusing on that first  
11:27AM 23 paragraph 1 at the bottom.

11:27AM 24 BY MR. AKINA:

11:27AM 25 Q And is it your understanding that James Dandar, he was

11:28AM 1 appointed by a state court to oversee the sale of that  
11:28AM 2 property?

11:28AM 3 A Yes.

11:28AM 4 MR. AKINA: We can take this down.

11:28AM 5 BY MR. AKINA:

11:28AM 6 Q So before the break you testified that there were several  
11:28AM 7 vehicles in addition to the Ferrari. And of those four  
11:28AM 8 Volkswagens and the Ford Bronco that you mentioned, who -- what  
11:28AM 9 entity were they held in? Who was the registered owner?

11:28AM 10 A The registered owner was Hawai'i Partners LLC.

11:28AM 11 Q For each of those vehicles?

11:28AM 12 A Right.

11:28AM 13 Q And those were seized in July of 2020?

11:28AM 14 A Yes.

11:28AM 15 MR. AKINA: Can we show and publish Exhibit 9-1232  
11:29AM 16 from the third supplement.

11:29AM 17 THE COURT: Yes, go ahead.

11:29AM 18 BY MR. AKINA:

11:29AM 19 Q Is this a picture of three of those Volkswagens?

11:29AM 20 A It is.

11:29AM 21 MR. AKINA: And if we can show -- if we can publish  
11:29AM 22 Exhibit 9-1219 from the third supplement, also in evidence.

11:29AM 23 THE CORT: Go ahead.

11:29AM 24 BY MR. AKINA:

11:29AM 25 Q Is this the fourth Volkswagen?

11:29AM 1 A It is, yeah. The back of the Volkswagen van.

11:29AM 2 MR. AKINA: And then if we can publish Exhibit 9-1230

11:30AM 3 from the third supplement.

11:30AM 4 BY MR. AKINA:

11:30AM 5 Q Is this the Ford Bronco you mentioned?

11:30AM 6 A It is.

11:30AM 7 MR. AKINA: Now, can we show the witness

11:30AM 8 Exhibit 11-73?

11:30AM 9 THE COURT: Go ahead.

11:30AM 10 MR. AKINA: And 11-74.

11:30AM 11 THE COURT: Yes.

11:30AM 12 MR. AKINA: 11-75.

11:30AM 13 THE COURT: Yes.

11:30AM 14 MR. AKINA: 11-76.

11:30AM 15 THE COURT: Yes.

11:30AM 16 MR. AKINA: 11-77.

11:30AM 17 THE COURT: Yes.

11:30AM 18 MR. AKINA: 11-78.

11:30AM 19 THE COURT: Go ahead.

11:30AM 20 MR. AKINA: And 11-79.

11:30AM 21 THE COURT: Yes.

11:30AM 22 BY MR. AKINA:

11:31AM 23 Q Are these all DMV records with certifications relating to

11:31AM 24 those vehicles that I just showed pictures of?

11:31AM 25 A Yes. Yeah, registration and ownership documentation

11:31AM 1 maintained by the City and County, yeah.

11:31AM 2 Q And they have -- they each have a seal attesting to it

11:31AM 3 being correct and accurate?

11:31AM 4 A Yes.

11:31AM 5 MR. AKINA: I'd offer Exhibits 11-73 through 11-79

11:31AM 6 into evidence.

11:31AM 7 THE COURT: Any objection?

11:31AM 8 MR. KENNEDY: No objection.

11:31AM 9 THE COURT: 11-73 through 11-79 then are each admitted

11:31AM 10 without objection. You may publish.

11:31AM 11 (Exhibits 11-73 through 11-79 were received in evidence.)

11:31AM 12 MR. AKINA: If we could start with 11-73.

11:31AM 13 BY MR. AKINA:

11:31AM 14 Q And is this one of the Volkswagen Bugs?

11:31AM 15 A Yes.

11:31AM 16 Q And specifically, this is the 1951 Volkswagen. What's the

11:31AM 17 VIN number here, if we could focus on that portion?

11:32AM 18 A 10234188.

11:32AM 19 Q And what was the license number for that?

11:32AM 20 A SYB865.

11:32AM 21 MR. AKINA: And if we zoom out of that.

11:32AM 22 BY MR. AKINA:

11:32AM 23 Q And it's registered to Hawai'i Partners, correct?

11:32AM 24 A Yes.

11:32AM 25 Q And what's the issuance date on this?

11:32AM 1 A It's 8/26/2016, so August of 2016.

11:32AM 2 MR. AKINA: If we can go to Exhibit 11-74. And

11:32AM 3 focusing on these top boxes showing the vehicle information.

11:32AM 4 All the way to the date.

11:32AM 5 BY MR. AKINA:

11:32AM 6 Q And this is for another Volkswagen Bug, 1956 model?

11:32AM 7 A Correct.

11:32AM 8 Q And what's the license number?

11:33AM 9 A 56VDUB.

11:33AM 10 Q And the VIN number?

11:33AM 11 A 109382821.

11:33AM 12 Q What date was this registration issued?

11:33AM 13 A 8/29/2016.

11:33AM 14 Q And zooming out, does it show Hawai'i Partners as the

11:33AM 15 registered owner?

11:33AM 16 A Yes.

11:33AM 17 Q If we could go to 11-76, is this for another one of the

11:33AM 18 Volkswagen Bugs?

11:33AM 19 A Yes.

11:33AM 20 Q And zooming in on that box with the vehicle information,

11:33AM 21 this is a 1957 model?

11:33AM 22 A Yes.

11:33AM 23 Q And what's the license number?

11:33AM 24 A EBYGRL.

11:33AM 25 Q And the VIN?

11:33AM 1 A 1529889.

11:33AM 2 Q And what date is this registration issued?

11:33AM 3 A 7/14/27 (verbatim).

11:34AM 4 Q And it's held in the name of Hawai'i Partners?

11:34AM 5 A Yes.

11:34AM 6 Q If we go to 11-75, and you see this notice of transfer in

11:34AM 7 the top right corner for that same vehicle, EBYGRL?

11:34AM 8 A Yes.

11:34AM 9 Q The date here, it's an earlier date of January 2015?

11:34AM 10 A Yes.

11:34AM 11 Q And so previously, who was the prior owner before Hawai'i

11:34AM 12 Partners?

11:34AM 13 A Kaulana Freitas.

11:34AM 14 MR. AKINA: If we could publish Exhibit 11-78. Zoom

11:34AM 15 in on vehicle information.

11:34AM 16 BY MR. AKINA:

11:34AM 17 Q Is this for the Volkswagen van?

11:34AM 18 A Yes.

11:34AM 19 Q And this is a 1961 model?

11:34AM 20 A Yes.

11:34AM 21 Q And what is the license number?

11:34AM 22 A SYB762.

11:35AM 23 Q And the VIN?

11:35AM 24 A 685167.

11:35AM 25 Q And what date was this registration issued?

11:35AM 1 A 7/17/2017.

11:35AM 2 Q And zooming out, it's also held in Hawai'i Partners' name?

11:35AM 3 A Yes.

11:35AM 4 MR. AKINA: And can we publish Exhibit 11-77.

11:35AM 5 THE COURT: Go ahead.

11:35AM 6 BY MR. AKINA:

11:35AM 7 Q Focusing on the vehicle information, is this that same

11:35AM 8 vehicle license plate SYB762?

11:35AM 9 A Yes.

11:35AM 10 Q So still for the Volkswagen van?

11:35AM 11 A Right.

11:35AM 12 Q And it's an older date here now, August of 2016; is that

11:35AM 13 right?

11:35AM 14 A Yes, August 23rd, 2016.

11:35AM 15 Q And if we zoom out, who was the previous owner?

11:35AM 16 A Delia Ann M. Fabro.

11:36AM 17 MR. AKINA: If we could publish Exhibit 11-79.

11:36AM 18 THE COURT: Yes.

11:36AM 19 BY MR. AKINA:

11:36AM 20 Q Focusing on vehicle information, this one is made by Ford,

11:36AM 21 so this is for the Ford Bronco?

11:36AM 22 A That's correct.

11:36AM 23 Q And what's the -- a 1970 model?

11:36AM 24 A Yes.

11:36AM 25 Q And what is the license number?

11:36AM 1 A TTY105.

11:36AM 2 Q And the VIN?

11:36AM 3 A U15GLG85573.

11:36AM 4 Q What is the issuance date for this registration?

11:36AM 5 A 5/20/2019.

11:36AM 6 Q And zooming out, is it held in the name of Hawai'i

11:36AM 7 Partners?

11:36AM 8 A Yes.

11:36AM 9 Q So the registration dates that we looked over, that ranges

11:36AM 10 from 2016 to 2019; is that correct?

11:36AM 11 A That's correct.

11:36AM 12 Q And based on -- and is it your understanding that that's

11:37AM 13 the time frame where Michael Miske's companies were in

11:37AM 14 operation?

11:37AM 15 A Yes.

11:37AM 16 Q So each of these would be considered property of Hawai'i

11:37AM 17 Partners?

11:37AM 18 A Yes, according to the registration, yeah.

11:37AM 19 Q It's registered in Hawai'i Partners' name.

11:37AM 20 A Yes.

11:37AM 21 MR. AKINA: And we can take this down.

11:37AM 22 BY MR. AKINA:

11:37AM 23 Q Was artwork, including paintings and sculptures, also

11:37AM 24 found at the 6 Lumahai residence?

11:37AM 25 A Yes.

11:37AM 1 Q And that was also in July of 2020?

11:37AM 2 A Yes.

11:37AM 3 MR. AKINA: If I can show the witness a series of  
11:37AM 4 exhibits from the 47th supplemental list, starting with 11-80?

11:37AM 5 THE COURT: Go ahead.

11:37AM 6 MR. AKINA: And 11-81. 11-82. 11-84. 11-85. 11-86.

11:38AM 7 11-87. 11-88. And 11-89.

11:38AM 8 BY MR. AKINA:

11:38AM 9 Q Are these pictures of artwork and paintings and sculptures  
11:38AM 10 that were at the 6 Lumahai residence?

11:38AM 11 A Yes.

11:38AM 12 MR. AKINA: I'd offer Exhibits 11-80 through 11-82 and  
11:38AM 13 11-84 through 11-89 into evidence.

11:38AM 14 THE COURT REPORTER: Can you say that again? 11 dash?

11:38AM 15 MR. AKINA: 11-80 through 11-82 and 11-84 through  
11:38AM 16 11-89 into evidence.

11:38AM 17 THE COURT: Any objection to those nine exhibits?

11:38AM 18 MR. KENNEDY: No objection.

11:38AM 19 THE COURT: Without objection, those nine exhibits are  
11:38AM 20 each admitted. That's 11-80 through 11-82 and 11-84 through  
11:39AM 21 11-89. You may publish.

11:38AM 22 (Exhibits 11-80 through 11-82 and 11-84 through 11-89 were  
11:38AM 23 received in evidence.)

11:39AM 24 MR. AKINA: If we could start with 11-80.

11:39AM 25 BY MR. AKINA:

11:39AM 1 Q Is this painting Ludavico & Ludovio by an artist named  
11:39AM 2 Retna?  
11:39AM 3 A Yes.  
11:39AM 4 MR. AKINA: Can we go to 11-81.  
11:39AM 5 BY MR. AKINA:  
11:39AM 6 Q Is this a painting Watermark by artist Retna?  
11:39AM 7 A Yes.  
11:39AM 8 MR. AKINA: Can we go to 11-82.  
11:39AM 9 BY MR. AKINA:  
11:39AM 10 Q Is this a painting Forever Young by Retna?  
11:39AM 11 A Yes.  
11:39AM 12 MR. AKINA: Can we go to the second page of the  
11:39AM 13 document. And focusing in on -- on the back of the painting  
11:39AM 14 itself.  
11:39AM 15 BY MR. AKINA:  
11:39AM 16 Q Can you make out the words "Forever" in the top left box?  
11:39AM 17 A Yes.  
11:39AM 18 Q And the top middle box, does that appear to be the word  
11:40AM 19 "Young"?  
11:40AM 20 A It appears to be, yeah.  
11:40AM 21 MR. AKINA: If we can publish Exhibit 9-1349 from the  
11:40AM 22 36 supplemental list, already in evidence.  
11:40AM 23 THE COURT: Go ahead.  
11:40AM 24 MR. AKINA: Go to page 8.  
11:40AM 25 BY MR. AKINA:

11:40AM 1 Q Does this --

11:40AM 2 MR. AKINA: And if we can zoom in on the top left

11:40AM 3 corner with the invoice to and information below it as well.

11:40AM 4 BY MR. AKINA:

11:40AM 5 Q Does this appear to be an invoice to Michael Miske dated

11:40AM 6 April 19, 2019, for Forever Young by Retna?

11:40AM 7 A Yes.

11:40AM 8 MR. AKINA: And zooming out, if we can focus on the

11:40AM 9 purchase price.

11:40AM 10 BY MR. AKINA:

11:41AM 11 Q What was the price here?

11:41AM 12 A \$195,000.

11:41AM 13 MR. AKINA: If we can publish Exhibit 11-84.

11:41AM 14 BY MR. AKINA:

11:41AM 15 Q Is this the painting Sangre Oscura by the artist Retna?

11:41AM 16 A Yes.

11:41AM 17 MR. AKINA: If we can go to Exhibit 11-85.

11:41AM 18 BY MR. AKINA:

11:41AM 19 Q Is this painting Graffiti Does It by OG Slick?

11:41AM 20 A Yes.

11:41AM 21 MR. AKINA: If we go to 11-87.

11:41AM 22 BY MR. AKINA:

11:41AM 23 Q Is this a sculpture Uzi Does It by OG Slick?

11:41AM 24 A Yes.

11:41AM 25 MR. AKINA: If we can now publish 11-86.

11:41AM 1 BY MR. AKINA:

11:41AM 2 Q Is this a sculpture titled Slick Skull also by OG Slick?

11:41AM 3 A Yes.

11:41AM 4 Q And what does that --

11:42AM 5 MR. AKINA: If we can focus on that document in front

11:42AM 6 of the skull.

11:42AM 7 BY MR. AKINA:

11:42AM 8 Q What is that?

11:42AM 9 A It's a certificate of authenticity.

11:42AM 10 MR. AKINA: Can we zoom out? If we could publish

11:42AM 11 Exhibit 11-88.

11:42AM 12 BY MR. AKINA:

11:42AM 13 Q Is this a painting Speaking in Tongues by an artist Defer,

11:42AM 14 also Alex Kizu?

11:42AM 15 A Yes.

11:42AM 16 MR. AKINA: And if we could publish Exhibit 11-89.

11:42AM 17 BY MR. AKINA:

11:42AM 18 Q Is this a painting by the same artist titled Spiritual

11:42AM 19 Language?

11:42AM 20 A It is.

11:42AM 21 Q And is that -- were you able to look previously at that

11:42AM 22 blue tape on the top?

11:42AM 23 A Yes.

11:42AM 24 Q And what was written there?

11:42AM 25 A The name of the painting.

11:42AM 1 MR. AKINA: We can take this down.

11:42AM 2 BY MR. AKINA:

11:43AM 3 Q Were there several bank accounts that were also found?

11:43AM 4 A Yes, there were several bank accounts that were seized in

11:43AM 5 July of 2020.

11:43AM 6 Q And what were those bank accounts?

11:43AM 7 A Mostly business bank accounts associated with the

11:43AM 8 Kama'aina family of companies, and then there was one personal

11:43AM 9 bank account of Mr. Miske's.

11:43AM 10 Q And so let's focus on the personal one first. Is that a

11:43AM 11 Hawaii Central Federal Credit Union account ending 075?

11:43AM 12 A I know it's a Hawaii Central, yes.

11:43AM 13 Q Did you schedule out activity for that account from

11:43AM 14 August 2019 to approximately July 2020?

11:43AM 15 A Yes.

11:43AM 16 Q And that would show money coming in, money coming out of

11:43AM 17 the account?

11:43AM 18 A Right.

11:43AM 19 MR. AKINA: Could we show the witness Exhibit 11-63.

11:44AM 20 THE COURT: Go ahead.

11:44AM 21 BY MR. AKINA:

11:44AM 22 Q And is this that schedule that you created?

11:44AM 23 A It is.

11:44AM 24 Q And here you listed the account number as ending in 075?

11:44AM 25 A Right.

11:44AM 1 MR. AKINA: I'd offer Exhibit 11-63 into evidence.

11:44AM 2 THE COURT: Any objection?

11:44AM 3 MR. KENNEDY: Give me a moment to just go through the

11:44AM 4 pages, Your Honor.

11:44AM 5 THE COURT: Yes.

11:44AM 6 MR. KENNEDY: Thank you.

11:44AM 7 MR. AKINA: If we could scroll through the pages.

11:44AM 8 MR. KENNEDY: No objection. Thank you.

11:44AM 9 THE COURT: 11-63 then is admitted without objection.

11:44AM 10 You may publish it.

11:44AM 11 (Exhibit 11-63 was received in evidence.)

11:44AM 12 MR. AKINA: If we could go back to the first page, and

11:44AM 13 just focusing on the top with the information on the accounts.

11:45AM 14 Along with the titles.

11:45AM 15 BY MR. AKINA:

11:45AM 16 Q Okay. So this is Michael Miske's personal account. At

11:45AM 17 some point in time were there other people added on as

11:45AM 18 signatories?

11:45AM 19 A Yes.

11:45AM 20 Q Who were those people?

11:45AM 21 A Delia Ann Fabro-Miske and Maydeen Stancil.

11:45AM 22 Q And the date there is October 2020. Is that after the

11:45AM 23 seizure took place?

11:45AM 24 A Correct.

11:45AM 25 Q And the activity that's shown here, that's for the time

11:45AM 1 period going up to July 17, 2020?

11:45AM 2 A Yes.

11:45AM 3 MR. AKINA: If we can zoom out.

11:45AM 4 BY MR. AKINA:

11:45AM 5 Q Okay. There are some red highlighted cells here. What

11:45AM 6 are those -- what do those represent?

11:45AM 7 A The highlights are just noting deposits that were made

11:46AM 8 into the account from the Kama'aina family of companies.

11:46AM 9 Q Did that include Kama'aina Termite and Pest Control?

11:46AM 10 A Yes.

11:46AM 11 MR. AKINA: And for this first red cell, if we could

11:46AM 12 focus on that as well as the balance and name portion to the

11:46AM 13 right.

11:46AM 14 BY MR. AKINA:

11:46AM 15 Q So this was almost \$4,000 deposited?

11:46AM 16 A Right.

11:46AM 17 Q And if we zoom out, what was the date for that

11:46AM 18 transaction?

11:46AM 19 A August 26, 2019.

11:46AM 20 Q And there's a memo to the right of it. What is that memo?

11:46AM 21 A The memo says "Payroll."

11:46AM 22 Q So was that one of the categories of money that was coming

11:46AM 23 in from the Kama'aina family of companies?

11:46AM 24 A Yes.

11:46AM 25 MR. AKINA: And looking at the very bottom of this

11:46AM 1 first page, that red highlight, if we could focus on that  
11:46AM 2 information to the -- all the way to the far right. Yeah.  
11:46AM 3 BY MR. AKINA:  
11:46AM 4 Q This is another type of inflow of money?  
11:47AM 5 A Right, yeah, and the -- the account there, yeah, I would  
11:47AM 6 group the inflow as roughly into two categories, one in, you  
11:47AM 7 know, payroll or maybe normal, you know, regularly scheduled,  
11:47AM 8 let's say, additions. And then you have these larger  
11:47AM 9 shareholder distributions. So this is one of the shareholder  
11:47AM 10 distributions from Kama'aina Holdings.  
11:47AM 11 Q And if we go to the second page, we see additional  
11:47AM 12 highlights. And if we go to the third page, additional  
11:47AM 13 highlights. Are those additional monies coming in from those  
11:47AM 14 companies?  
11:47AM 15 A Yes.  
11:47AM 16 Q And so on this third page on October 2nd of 2019 --  
11:47AM 17 MR. AKINA: Can we focus on those top two red  
11:47AM 18 highlights going to the far right?  
11:47AM 19 BY MR. AKINA:  
11:47AM 20 Q The bottom one for \$3,700, is that also from another  
11:47AM 21 company, Kama'aina Plumbing and Renovations?  
11:47AM 22 A Yes.  
11:48AM 23 MR. AKINA: And then if we go to page 8.  
11:48AM 24 BY MR. AKINA:  
11:48AM 25 Q We skipped a few pages, but are there regular inflows of

11:48AM 1 money?

11:48AM 2 A Yes.

11:48AM 3 Q And is that consistent with payroll, also approximately

11:48AM 4 every two weeks?

11:48AM 5 A Yes.

11:48AM 6 MR. AKINA: And we're on this final page of the

11:48AM 7 document -- or, no, we're not. We are on the eighth page of

11:48AM 8 the document, and looking at these three red cells, and if we

11:48AM 9 could zoom in all the way to the right.

11:48AM 10 BY MR. AKINA:

11:48AM 11 Q This is January 2020. What are the amounts here?

11:48AM 12 A \$40,000 from Kama'aina Holdings, 50,000 from Kama'aina

11:48AM 13 Termite and Pest Control, and \$5,299.43 from Kama'aina Termite.

11:48AM 14 Q Over the period that you scheduled out here from

11:49AM 15 August 20, 2019, to July 17, 2020, about how much money came in

11:49AM 16 from Kama'aina companies?

11:49AM 17 A This is over \$200,000.

11:49AM 18 MR. AKINA: And if we go to the last page of the

11:49AM 19 document. Looking at that line item, July 17, 2020. The one

11:49AM 20 below that.

11:49AM 21 BY MR. AKINA:

11:49AM 22 Q This one is to -- is this money coming in or going out?

11:49AM 23 A So this is money going out of the account.

11:49AM 24 Q Can you explain what this transaction shows?

11:49AM 25 A Yes. So we served a seizure warrant for -- for this bank

11:49AM 1 account on Hawaii Central Federal Credit Union, and just the  
11:50AM 2 logistics and process of that is when a seizure warrant is  
11:50AM 3 served, the check is made out to the United States Marshals  
11:50AM 4 Service to go into an escrow or holding account.  
11:50AM 5 So what you're seeing here is that check coming out to  
11:50AM 6 go to the Marshals Service for the balance of the account at  
11:50AM 7 that time.  
11:50AM 8 Q Okay. So you said balance of the account. That means all  
11:50AM 9 the money that was in there as of that date?  
11:50AM 10 A Yeah, correct.  
11:50AM 11 Q And what was the amount?  
11:50AM 12 A \$81,656.56.  
11:50AM 13 Q Okay. So fair to say that this account contained proceeds  
11:50AM 14 from Kama'aina Termite and Pest Control and other companies  
11:50AM 15 from the Kama'aina family of companies?  
11:50AM 16 A Yes.  
11:50AM 17 MR. AKINA: We can take this down.  
11:50AM 18 BY MR. AKINA:  
11:50AM 19 Q You testified that there were other business bank accounts  
11:50AM 20 that were also seized.  
11:50AM 21 A That's correct.  
11:50AM 22 Q Did you schedule out just showing the accounts, the  
11:51AM 23 account numbers and the amounts taken or seized?  
11:51AM 24 A I did, yeah.  
11:51AM 25 Q And that was pursuant to a court order?

11:51AM 1 A Yes, the -- yeah, pursuant to the -- yeah, the seizure  
11:51AM 2 warrant.

11:51AM 3 MR. AKINA: If we could show the witness Exhibit 11-91  
11:51AM 4 from the 47th supplement.

11:51AM 5 THE COURT: Go ahead.

11:51AM 6 BY MR. AKINA:

11:51AM 7 Q Does this table show those business bank accounts and the  
11:51AM 8 personal Hawaii Central Federal Credit Union account that we  
11:51AM 9 just looked at?

11:51AM 10 A Yes, it does.

11:51AM 11 MR. AKINA: I'd offer Exhibit 11-91 into evidence.

11:51AM 12 THE COURT: Any objection?

11:51AM 13 MR. KENNEDY: No objection.

11:51AM 14 THE COURT: 11-91 is admitted. You may publish it.  
(Exhibit 11-91 was received in evidence.)

11:51AM 15 MR. AKINA: Can we focus on the table?

11:51AM 16 BY MR. AKINA:

11:51AM 17 Q And so in total, there were two accounts from Kama'aina  
11:52AM 18 Termite and Pest Control and two from Oahu Termite and Pest  
11:52AM 19 Management?

11:52AM 20 A Yeah, that's correct. Yeah, like a regular maybe checking  
11:52AM 21 or operating account, and then a savings account for each.

11:52AM 22 Q And then one from Kama'aina Plumbing and Renovations?

11:52AM 23 A Yes.

11:52AM 24 Q And so this shows the seized balance. That's the balances

11:52AM 1 that were in the accounts when they were seized?

11:52AM 2 A That's correct.

11:52AM 3 Q So for the Bank of Hawaii account ending 602 for Kama'aina

11:52AM 4 Termite and Pest Control, how much was in that?

11:52AM 5 A \$1,063,427.35.

11:52AM 6 Q And for the Bank of Hawaii account ending 415 for the

11:52AM 7 Kama'aina Termite and Pest Control account, how much was in

11:52AM 8 that?

11:52AM 9 A \$300,372.85.

11:53AM 10 Q And for the account -- Bank of Hawaii account ending 414

11:53AM 11 for Oahu Termite and Pest Management, how much was in that?

11:53AM 12 A \$206,725.80.

11:53AM 13 Q And for the Bank of Hawaii account ending 218 for O'ahu

11:53AM 14 Termite and Pest Management, how much was in that?

11:53AM 15 A \$170,105.72.

11:53AM 16 Q And for the Bank of Hawaii account ending in 220 for

11:53AM 17 Kama'aina Plumbing and Renovations, how much was in that?

11:53AM 18 A \$22,710.48.

11:53AM 19 Q And you said that these are business operating, savings or

11:53AM 20 checking accounts?

11:53AM 21 A Yes.

11:53AM 22 Q So it would contain proceeds from profits that the company

11:53AM 23 has made?

11:53AM 24 A Yes.

11:53AM 25 Q It would contain money that could be used for -- to pay

11:53AM 1 for expenses?

11:53AM 2 A Yes.

11:53AM 3 Q Money that could be used to be paid for -- to continue the

11:53AM 4 operations of those companies?

11:54AM 5 A Yes.

11:54AM 6 MR. AKINA: No further questions at this time.

11:54AM 7 THE COURT: Mr. Kennedy, you reserve cross until

11:54AM 8 tomorrow?

11:54AM 9 MR. KENNEDY: Yes.

11:54AM 10 THE COURT: All right.

11:54AM 11 MR. AKINA: Your Honor, may --

11:54AM 12 THE COURT: You may step down. Thank you, sir.

11:54AM 13 MR. AKINA: May we approach, Your Honor?

11:54AM 14 THE COURT: Yes.

11:54AM 15 (Sidebar on the record:)

11:54AM 16 MR. AKINA: So that's all the witnesses that we have.

11:55AM 17 We would be -- if cross-examination had happened, we would be

11:55AM 18 prepared to rest. We don't have -- we don't plan on calling

11:55AM 19 additional witnesses unless something unforeseen happens on

11:55AM 20 cross-examination.

11:55AM 21 THE COURT: Okay.

11:55AM 22 MR. AKINA: So that's what we have. That's the

11:55AM 23 state of --

11:55AM 24 THE COURT: So right now then, that means we will be

11:55AM 25 finished for today --

11:55AM 1 MR. AKINA: Correct.

11:55AM 2 THE COURT: -- and that the two crosses will be

11:55AM 3 tomorrow.

11:55AM 4 MR. AKINA: Correct.

11:55AM 5 THE COURT: Okay. And then tomorrow, assuming no

11:55AM 6 other witnesses are prompted by the cross, the defense has

11:55AM 7 Mr. Hines, I assume.

11:55AM 8 MS. PANAGAKOS: We do.

11:55AM 9 THE COURT: And then anyone else that you intend to

11:55AM 10 call at this point?

11:55AM 11 MS. PANAGAKOS: Possibly Mr. Miske.

11:55AM 12 THE COURT: Possibly Mr. Miske, okay.

11:55AM 13 Okay. So it's possible that the jury could have this

11:55AM 14 tomorrow.

11:55AM 15 MS. PANAGAKOS: Yes.

11:55AM 16 THE COURT: Okay. All right. We're just about at

11:55AM 17 noon, so we're going to soon take a lunch break, but I guess it

11:55AM 18 will be a break for the day at this point.

11:55AM 19 Anything else?

11:55AM 20 MR. KENNEDY: Nothing from us.

11:55AM 21 MR. AKINA: Not from the government.

11:55AM 22 THE COURT: Thank you.

11:55AM 23 MR. AKINA: Oh, sorry, we do have one thing. There

11:56AM 24 was one item that we intentionally left out of the artwork.

11:56AM 25 It's a painting --

11:56AM 1 THE COURT: Brian Flores?

11:56AM 2 MR. AKINA: Yes, that's the one that the government is

11:56AM 3 going to concede. So we'd just ask that it be taken off the

11:56AM 4 verdict form that goes to the jury.

11:56AM 5 THE COURT: Okay. I was going to tell you this at the

11:56AM 6 end of the day today, but we just published the verdict form

11:56AM 7 and the jury instructions from the last discussion we had

11:56AM 8 because there were no changes from the last discussion. So I

11:56AM 9 think --

11:56AM 10 MR. KENNEDY: Maybe we can just do a stipulation to

11:56AM 11 say that one is no longer --

11:56AM 12 THE COURT: Well, we can go in and -- I mean, the jury

11:56AM 13 doesn't have it yet, so we can go ahead and modify the -- there

11:56AM 14 would be no changes to the instructions. It would just be the

11:56AM 15 verdict form just to remove that.

11:56AM 16 MR. AKINA: Just to remove that.

11:56AM 17 THE COURT: I think we can accomplish that.

11:56AM 18 MR. AKINA: I believe that you listed out in the jury

11:56AM 19 instructions as well.

11:56AM 20 MR. KENNEDY: In Instruction 1.

11:56AM 21 THE COURT: Ah, okay. So we'll edit that in both

11:56AM 22 cases, and then publish new ones later today.

11:57AM 23 MR. AKINA: Thank you.

11:57AM 24 MS. PANAGAKOS: Your Honor, I'm not positive about

11:57AM 25 Mr. Hines. That will depend on the cross.

11:57AM 1 THE COURT: Sure. Sure. Thank you.

11:57AM 2 (End of sidebar.)

11:57AM 3 THE COURT: All right. So it is just about noon, and

11:57AM 4 although I thought we would be taking a lunch break right

11:57AM 5 around this point, we're actually going to be taking a break

11:57AM 6 for the trial day. We will resume tomorrow morning at 8:30 for

11:57AM 7 the cross-examinations of the two witnesses that took the stand

11:57AM 8 earlier -- earlier this morning.

11:57AM 9 Okay. So as we go to break, I'll remind our jury to

11:57AM 10 please once again refrain from discussing the substance of this

11:57AM 11 case with anyone, including each other, although you obviously

11:57AM 12 did deliberate on Phase 1. At this point until deliberations

11:57AM 13 begin on Phase 2, no discussions amongst one another regarding

11:58AM 14 the substance of this case. Also do not discuss -- do not

11:58AM 15 access, rather, any media or other accounts of this case that

11:58AM 16 may be out there, and do not conduct your own investigation

11:58AM 17 into anything relating to this case.

11:58AM 18 So we'll see you tomorrow morning at 8:30.

11:58AM 19 (Proceedings were concluded at 11:58 a.m.)

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**COURT REPORTER'S CERTIFICATE**

I, Gloria T. Bediamol, Official Court Reporter, United States District Court, District of Hawaii, do hereby certify that pursuant to 28 U.S.C. §753 the foregoing is a complete, true, and correct transcript from the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

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10 DATED at Honolulu, Hawaii, January 16, 2025.

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13 /s/ Gloria T. Bediamol

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15 RMR, CRR, FCRR

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